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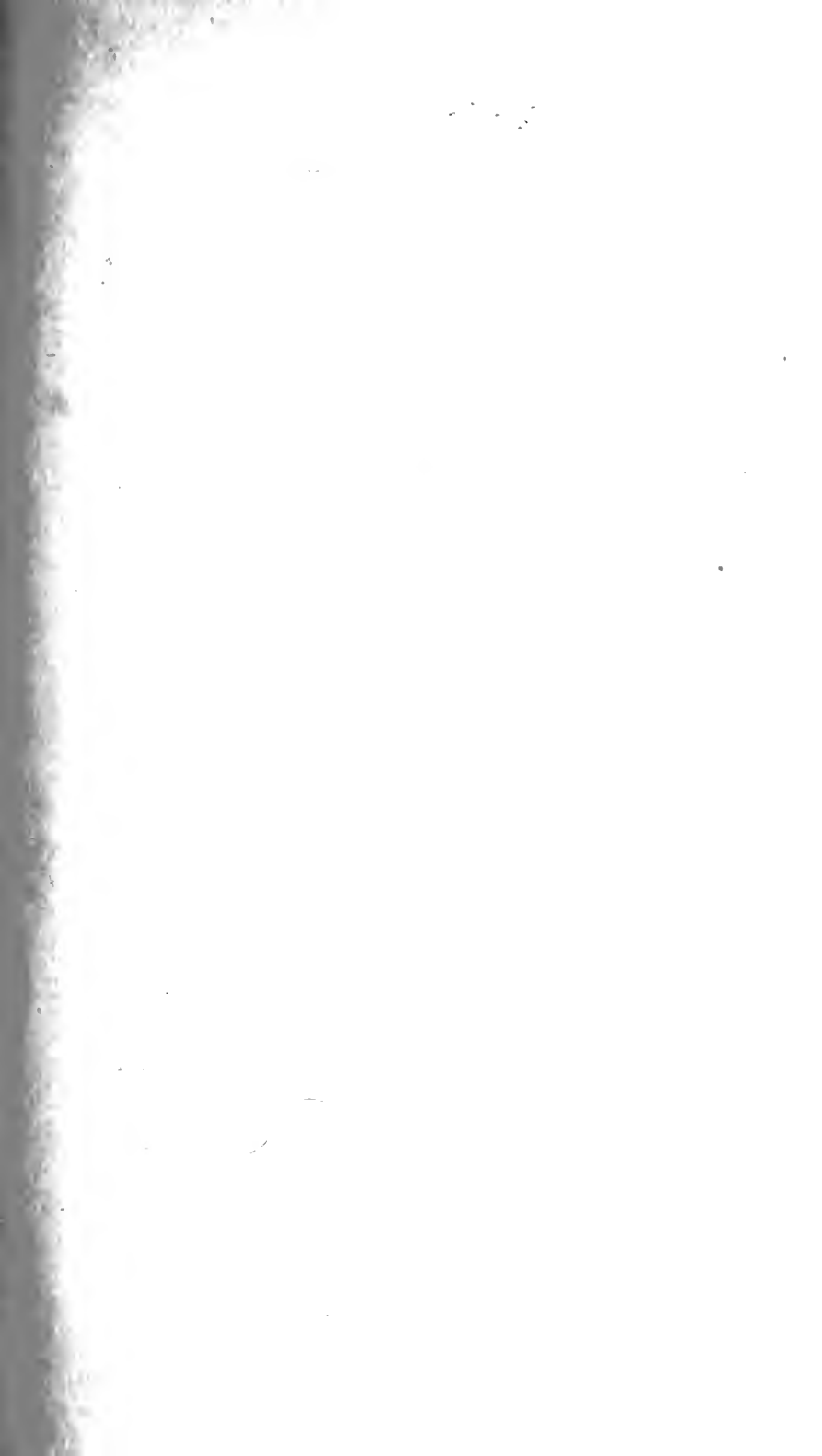
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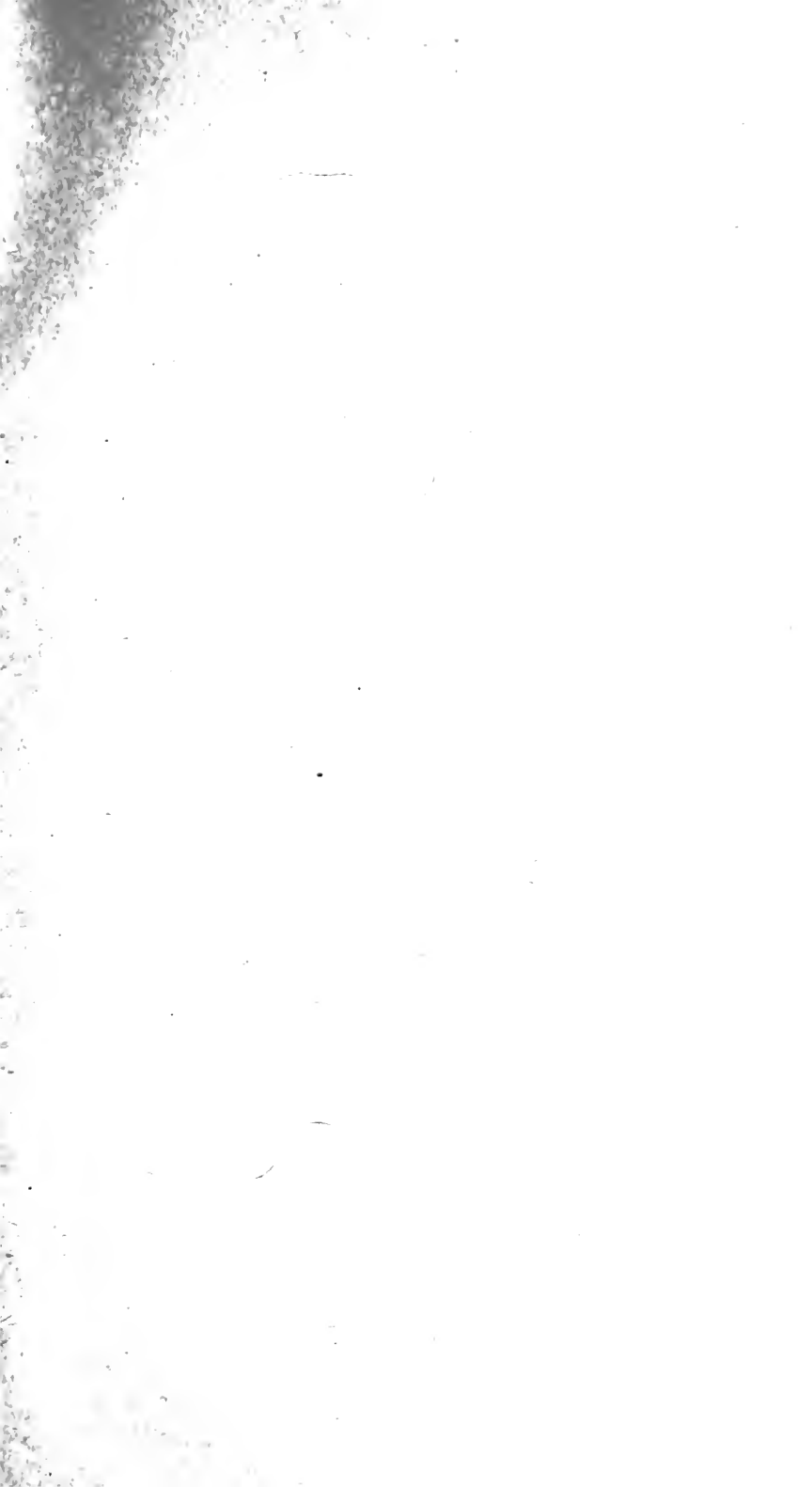
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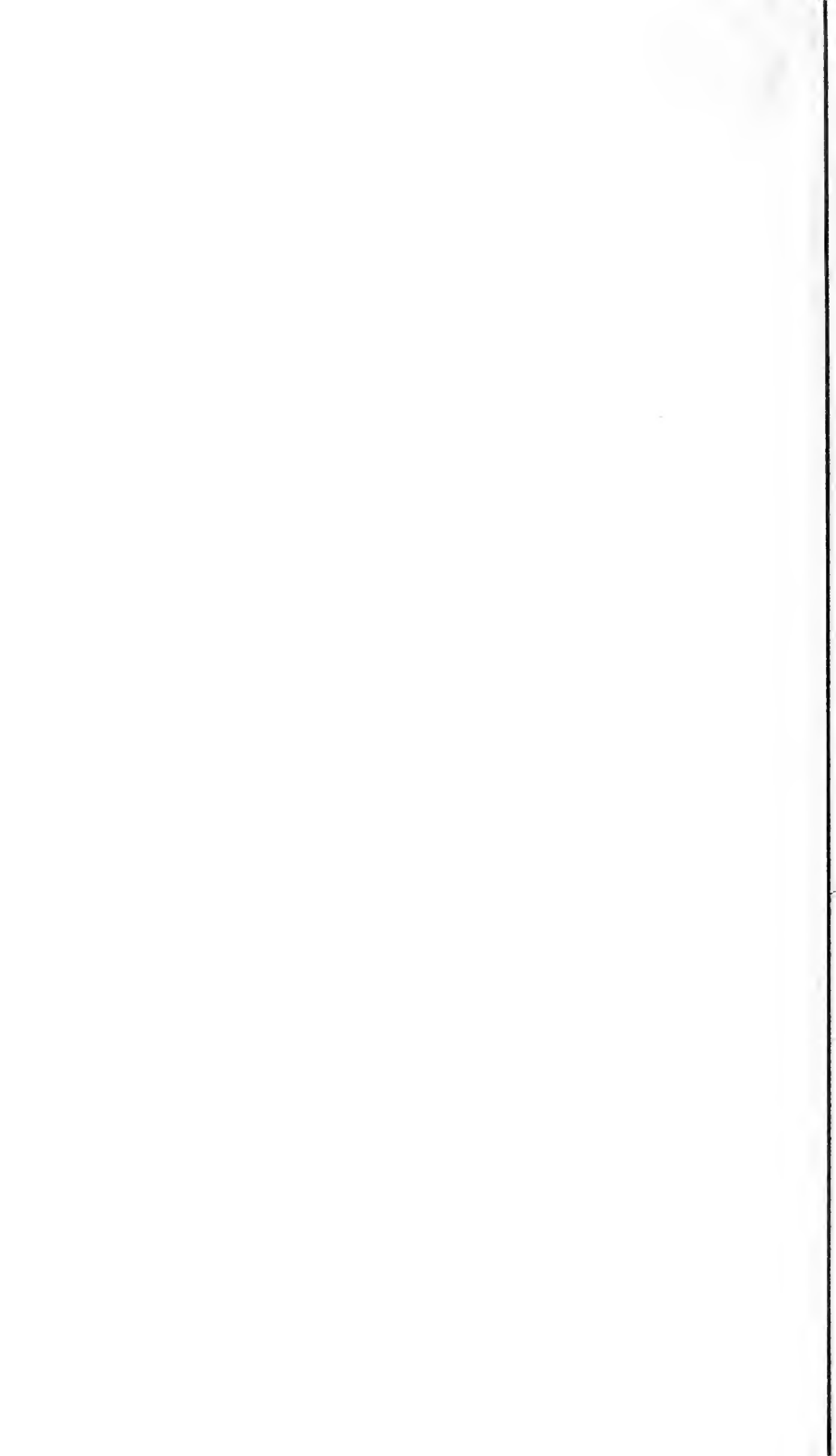
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United States
Court of Appeals
for the Ninth Circuit

FREDERICK I. RICHMAN, Appellant,
vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

LYDA TIDWELL, Appellant,
vs.

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Transcript of Record

In Three Volumes

VOLUME I.

(Pages 1 to 316, inclusive.)

Appeals from the United States District Court for the Southern
District of California, Central Division

FILED

SEP 13 1955

No. 14702

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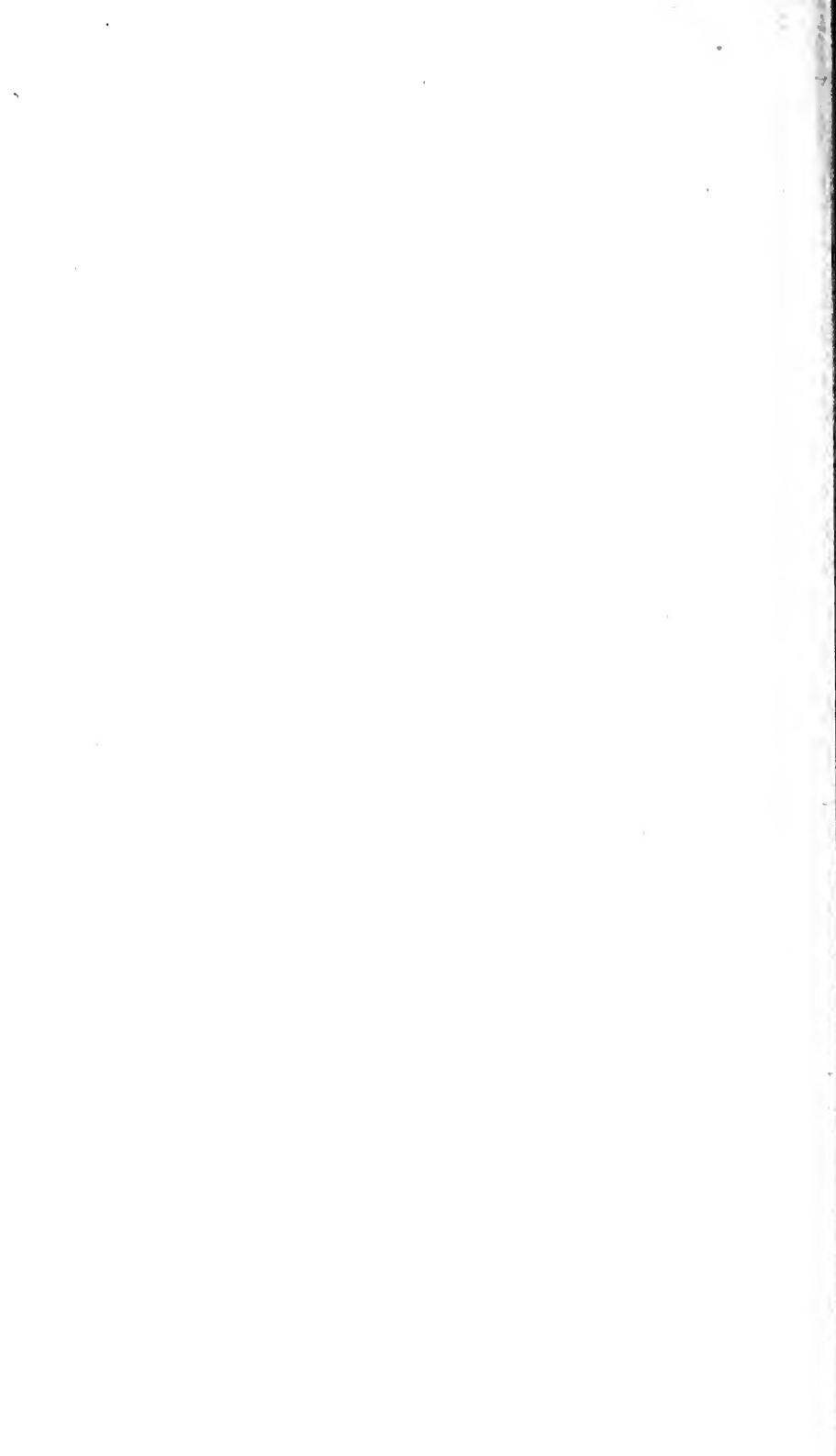
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* Page numbers appearing at foot of page of original Transcript of Record.



In the United States District Court for the Southern District of California, Central Division

No. 13,742-T.

LYDA TIDWELL, et al., Plaintiffs,

VS.

FREDERICK I. RICHMAN, et al.,

Defendants.

MEMORANDUM OF DECISION

This is an action between Lyda Tidwell and Frederick I. Richman each of whom is a trustee and trustor under a Declaration of Trust. Plaintiff has brought suit asking this Court to permit her to void the Declaration of Trust and for a distribution of the assets of the estate to the trustors. She claims that the Trust is a voidable one because of (1) undue influence in the inception; (2) fraud in the inception; (3) fraudulent and improper management; and (4) that after the establishment of the Trust it has been fraudulently and wrongfully managed by the defendant to such an extent that he should be removed as agent of the trustees and the Trust should be terminated.

At a pretrial conference the Court ordered a trial [2] upon the single issue of whether there was undue influence or fraud or both which moved plaintiff to execute the Declaration of Trust. It was held by the Court that if plaintiff prevail on this issue, there need not be a trial as to the later issue except as it might become involved in distribution of the estate to the persons entitled thereto and in an

accounting which would necessarily be involved. Plaintiff has objected to this procedure on the basis that a showing of certain acts of mismanagement (which she claims she is able to show) will relate back to the things which were done before she executed the Trust Declaration, and will show that certain privileges of management which defendant has under the Trust Declaration were in fact set up as they are in order to enable him to do the supposedly high-handed and improper acts of which she accuses him. The Order of the Court relating to the separation of issues for trial is a provisional one. It provides for a trial upon the issue of voidability of the Trust because of undue influence and fraud in the inception. Evidence of how the Trust has been managed since it has been created has been specifically excluded from the trial of the issue regarding undue influence and fraud in the inception. The Court has ruled that if plaintiff prevail upon the theory thus being tried, the only need to go into acts of management will be in the accounting. The ruling was that if plaintiff cannot establish her cause of action upon the theory of wrong in the beginning, the Court will still hold open its findings in that regard so that if any evidence received in the course of trying the issue of post execution management and alleged fraud be relevant to what has been termed the First Issue, the Court would not have foreclosed itself from consideration thereof in [3] making its findings. This has brought the case to trial in a posture where potentially plaintiff might make out her case on trial of the First

Issue and establish a right to voiding the Declaration of Trust and distribution of the assets with an accounting. If the evidence be insufficient for that purpose, she still would have a right, under the terms of the Order severing issues for trial, to continue to try fraud in the inception during the trial of the issue of mismanagement and fraud on the part of the agent after the Trust was executed. Trial of the First Issue has occupied in excess of 19 days of testimony and argument. It therefore readily appears that trial of the other referred to issues would also be extensive and that it has been provident to sever the issues in order to conserve trial time with its attendant expense to the litigants. It now appears that plaintiff has made out her case on her theory of undue influence in the inception of the arrangement, and the only reason for setting forth the limitations immediately above described is to explain to any reviewing court that this case has been tried upon a limitation as described.

The creation of the Trust arises out of many circumstances which include the fact that Mrs. Tidwell and Mr. Richman were the immediate descendants of parents who left considerable wealth.

Early in the occurrence of circumstances which led to execution of the Declaration of Trust, Lyda Tidwell was known as Lyda Blythe Richman Nagel. She was at that time the wife of one Nagel whom she thereafter divorced. She later married Albert Ray Tidwell, with her brother's grumbling acceptance of the union. The brother has always consid-

ered him one of the host of fortune hunters whom he [4] continually feared as threats to the inheritance. She is a woman well educated in Liberal Arts, having been graduated from well respected schools, and holds some academic degrees indicating advanced education. Her education has been predominantly in language and literature. Following graduation from the last of the schools which she attended, she was employed for a time by the State of California in one of the Relief Agencies which existed during the depression years. Her position was that of Case Worker and at one time she was a Supervisor of Case Workers. Apparently she did well in that employment. She has taught school in one of the South American countries where she instructed children of resident American Nationals. Since her return she has delivered public lectures on her observations and experiences in travel.

Although making no claim to being a woman of great physical beauty, Mrs. Tidwell is none-the-less a person of considerable personal charm and attraction. It would be expected that if she were without estate, she would still be appealing as a prospect for matrimony. This is important here because of defendant's long term insistence that it is not true. Defendant Frederick I. Richman is her only sibling. He is older, much more aggressive, and a successful member of the California State Bar. His very considerable learning and ability in the Law and handling of property brought him to a position where his parents had considerable trust in him as an advisor concerning their own affairs, and they

manifested a great deal of pride in the ability and progress of their son. Throughout her youth, Mrs. Tidwell (first as Lyda Blythe Richman and later as Lyda Blythe Richman Nagel) held a young sister's considerable admiration for the very real and proudly recognized [5] accomplishment and senior standing in the family of her Stanford-trained lawyer brother. She thought of herself as educated in the gentle arts and of defendant as a wise, technically trained master of practical estate problems. He was actually a man of somewhat testy and domineering disposition, inclined to be critical of his younger sister's habits and friends. While she looked up to him, he looked down upon her. The parents, who were in declining years (the father having already suffered a stroke and being under some disability) had need to rely for some guidance in legal and property affairs, and often looked in part to their accomplished son for that guidance. Mrs. Tidwell often accompanied her father and brother on errands to a rental property. She sometimes even collected some rents but never became, nor was trained to become, a manager of income property. The culture which had been acquired by their daughter Lyda was in the classical type of education. The brother had developed his natural talents to the extent that he was a capable, well trained lawyer, having special acquaintance with trust and related matters. He was given to making sharp taunts toward his sister, expressing to her that she lacked physical charm and possessed physical disabilities (which were really non-existent un-

less she has recently been remarkably reconstructed) that would make her undesirable in the marriage market except to a fortune hunter to whom she would have strong attraction solely because of the substantial nature of her then prospects of inheritance and later realization of those prospects. The evidence indicates that Mr. Richman did believe that his sister would be naturally attractive to fortune hunters and did tend to regard her male friends as either casual acquaintances or direct seekers for her financial bounty. [6] He pointedly emphasized his view that no one else would be interested in her. He did consider himself (rightfully so) a very well educated and capable lawyer. This accomplishment was continually in plaintiff's mind.

Mrs. Tidwell, during the time that she was Mrs. Nagel and subsequently unto the present time, has been plagued with occasional, but sometimes very substantial, legal problems. She did not get along well with her first husband and ultimately divorced him. There was a property settlement in the course of dissolution of that unhappy marital union. She lacked education and schooling in tax matters and her lawyer brother possessed them to a high degree. He acted as her attorney in the liquidation of her marital problem and in the making of her tax returns. The evidence shows that whenever she needed a lawyer, she turned to her brother who was ever available, competent and, while a little patronizing toward his sister, efficient in handling her legal needs. The parents had been careful, prudent and efficient in putting their affairs in order during

their retirement. They were trustors under a Declaration of Trust and although the evidence is meager on the point, it is uncontradicted that considerable saving in expense in the after death settlement of their affairs was accomplished by the fact that said Trust was in existence. There is evidence that plaintiff at one time told her brother that since so much in the way of property costs and taxation had been saved by the parents' Trust, it would be advantageous for the brother and sister (now plaintiff and defendant in this action) to have a similar trust. The whole sum of evidence, however, adds up to the fact that the brother, in early life, gained something of a mastery over his sister's will in connection with her thoughts concerning her estate and [7] that the real suggestion that there be a trust between these siblings, of divergent personality and objectives, was adroitly suggested by the brother. It appears that he always thought of the estate as something to be guarded, built up, and essentially kept intact (although the properties of which it consisted might be sold or exchanged). His thought was to hold the basic fortune and some of its increment together. Her philosophy was that she was a woman of means and might as well spend some of it. There is no suggestion in her conduct of financial profligacy, but her brother was, and still is, constantly fearful of dissolution of the estate he has seen and helped grow. He abhors her plan to give up the secure income derived from a good apartment property and collaborate with her husband in development of a more venturesome busi-

ness. It is true that the mere fact of brother and sister relationship does not in itself create a fiduciary status. It may well be, and in this case was, one of the ingredients in a fact situation leading to the creation of such a relationship. See **Johnson vs. Clark**, 7 Cal. 2d 529, at pp. 534-535:

“Plaintiff and defendant are sisters. The relation between sisters is not presumed to be confidential, as is the relation between husband and wife, parent and child, attorney and client, but a confidential relation between sisters may be shown to exist. (Citing cases) Blood relationship is an important factor in determining whether in fact a confidential relationship existed. (Citing case, *supra*) Where it is established as a fact that a confidential [8] relation exists between sisters, the rules governing confidential relations apply, and a presumption of undue influence arises from any transaction by which the person in the superior position gains an advantage over the other. (Citing cases.) Such transactions are constructively fraudulent, and the burden is cast upon the party who has gained the advantage to show fairness and good faith in all respects. Citing cases.)”. (Emphasis in quoted material.)

To similar effect is **Odell vs. Moss**, 130 Cal. 352, where it was said, at p. 356:

“The relationship of brother and sister is not in itself a fiduciary relation, but it is a material circumstance in considering the question whether, in fact, such a relation existed. * * *”.

Having observed and heard the brother and sister as they related their stories, each subjected to searching cross-examination, and also having in mind the testimony of other witnesses who testified to the point, the Court finds that a fiduciary relationship existed between brother and sister in the instant situation, from at least the time plaintiff became of age.

A still more definitely defined fiduciary relationship has existed at all times pertinent to the transactions in question because of an attorney and client relationship which began during the domestic trouble of plaintiff with her first husband and continued until shortly before plaintiff brought this action. [9]

The basic rule is stated in 6 California Jurisprudence 2nd 306, where Section 137 says:

“* * * The attorney’s relation to his client is both fiduciary, committing the attorney to the most scrupulous good faith, * * *”.

This is treated more fully at pages 317-319 of the same work where Section 142 says:

“* * * An attorney at law is not prohibited from entering into any business transaction with a client, touching or not touching the subject matter professionally entrusted to him by the client. Such transactions are, however, subject to a close scrutiny, and they must be shown to be fair in all respects. The attorney must prove that he has given to the client all that reasonable advice against himself that he would have given him against a third person regarding a similar transaction. Some cases go even

further by holding that the client is entitled to advice independent from that of the attorney though also stating that this element alone is not conclusive. The attorney is thus charged with the so-called presumption of undue influence.

“The presumption is based on the fiduciary character of the attorney-client relationship, and on a statutory provision to the effect that all transactions [10] between a trustee and his beneficiary, by which the trustee obtains any advantage, are presumed to be entered into without any consideration and under undue influence. That statute is applicable to the attorney-client relationship. The presumption is to the effect that ‘undue influence’ was used by the attorney in inducing the client to enter into the transaction, and that he did not give sufficient consideration to the client. This does not mean, however, that a total want of consideration is presumed. And, even where the presumption applies, and has not been rebutted, the transaction involved is not void, but merely voidable. A typical example of the application of the presumption of undue influence is the case of a will, drafted for a client by an attorney or under his direction or influence, whereby a disposition is made in favor of the attorney.”

It is of importance to measure the facts of the case against a rule stated in Section 143 of the same Chapter, at pp. 320-321, as follows:

“* * * The presumption of undue influence is applicable only to contracts entered into while the attorney-client relationship exists; it does not apply

to contracts which create the relationship. In negotiating the terms of the attorney's employment, the prospective client deals [11] with the attorney at arm's length. * * *".

It is uncontradicted that plaintiff consulted defendant whenever she needed counsel, and there is no doubt but that a general relationship of attorney and client existed at the time critical to the present transaction.

It is plain that defendant had ample counsel, and while this was entirely proper, possibly necessary and, in any event, wise, it is striking that in entering into the arrangement to which defendant now seeks to hold plaintiff for life, the plaintiff relied entirely upon defendant. Under the circumstances which created a fiduciary relationship upon two separate bases (amplified older brother and younger sister and attorney-client), it was the definite duty of Mr. Richman to insist that his sister have independent legal counsel before extending the general relationship of attorney and client into a lifetime employment of the attorney. This he not only did not do but tended to discourage while paying slight and nominal lip service to the principle.

This leads to a consideration of whether he has carried his burden. Very definitely he has not. He intended to and did secure an advantage. He obtained a lifetime contract of employment at a rate of compensation which, if not absolutely excessive, was at least in the upper limits of charges, and provided for permanent employment at fees which

would not have been agreed to by one looking for a trustee in an open competitive market.

Some apt language on the general duty of defendant appears in *Bacon vs. Soule*, 19 Cal. App. 428, at p. 434:

“The law relating to the subject of confidential relations has been so often declared and is generally so well [12] understood that a mere reference to its underlying principles will suffice for the discussion and decision of the paramount point presented upon this appeal. A ‘confidential relation’ in law may be defined to be any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter’s knowledge or consent. A ‘fiduciary relation’ in law is ordinarily synonymous with a ‘confidential relation.’ It is also founded upon the trust or confidence reposed by one person in the integrity and fidelity of another, and likewise precludes the idea of profit or advantage resulting from the dealings of the parties and the person in whom the confidence is reposed. (Civ. Code, sec. 2219; [Citing cases].)

“Confidential relations are presumed to exist between husband and wife, partners, and parent and

child, priest [13] and parishioner, principal and agent, guardian and ward, counsel and client, etc., and in each of said relations the party in whom the confidence is reposed must stand in his dealings with the other party unimpeached of the slightest abuse of the confidence reposed, and if he **derives** or claims any advantage from the relation, the law places upon him the burden of showing that the transaction out of which the advantage arose was fair and just and fully understood and consented to by the party confiding in him. * * *".

See also, Matter of Danford, 157 Cal. 425, at p. 429:

"* * * The relation between attorney and client is 'a fiduciary relation of the very highest character, and binds the attorney to most conscientious fidelity—uberrima fides.' (Cox vs. Delmas, 99 Cal. 104, 123, [33 Pac. 836].) It is one which precludes the attorney from obtaining any personal advantage by abusing the confidence reposed in him by his client. (In re Burris, 101 Cal. 624, [36 Pac. 101].) * * *"

It is true that Danford charged high fees for services not rendered, but this is so close to charging higher fees for actual services, than is ordinarily charged for such services, that the same principle is involved here although in a different degree.

As the relationship was already in existence and [14] related to future services, the exceptions mentioned in Cooley vs. Miller & Lux, 156 Cal. 510, will not save defendant but the general rules therein stated must be applied against him. See that case, at pp. 523, 524:

"The rule is well established that the relation of attorney and client is confidential in character and that any contract entered into between them while that relation continues whereby the attorney obtains an advantage from the client, is presumed to have been made by the client under the undue influence of the attorney. (Kisling vs. Shaw, 33 Cal. 440, [91 Am. Dec. 644]; Civ. Code, sec. 2235; 1 Story's Equity Jurisprudence, secs. 310, 311; 2 Pomeroy's Equity Jurisprudence, sec. 390.) In the section cited Mr. Pomeroy says: 'The presumption always arises against the validity of a purchase or sale between the client and attorney made during the existence of the relation. The attorney must remove that presumption by showing affirmatively the most perfect good faith, the absence of undue influence, a fair price, knowledge, intention, and freedom of action by the client, and also, that he gave his client full information and disinterested advice * * * If all these circumstances are proved the contract will stand; if not, it will be defeated or set aside.' The presumption does not apply to a [15] transaction in which the attorney openly assumes a hostile attitude to his client. (Johnson vs. Fesemeyer, 3 DeG & J. 22.) Nor is it applicable to a contract by which the relation is originally created and the compensation of the attorney fixed. The confidential relation does not exist until such contract is made and in agreeing upon its terms the parties deal at arm's length. * * *"

See also, Felton vs. LeBreton, 92 Cal. 457, at p. 469:

“While an attorney is not prohibited from having business transactions with his client, yet, inasmuch as the relation of attorney and client is one wherein the attorney is apt to have very great influence over the client, especially in transactions which are a part of or intimately connected with the very business in reference to which the relation exists, such transactions are always scrutinized by courts with jealous care, and are set aside at the mere instance of the client, unless the attorney can show by extrinsic evidence that his client acted with full knowledge of all the facts connected with such transaction, and fully understood their effect; and in any attempt by the attorney to enforce an agreement on the part of the client growing out of such transaction, the burden of proof is always upon the attorney to show that the dealing [16] was fair and just, and that the client was fully advised. (Citing cases.) In the words of Lord Eldon, he must make it manifest that he gave to his client ‘all that reasonable advice against himself that he would have given him against a third person.’ * * *”.

The Declaration of Trust was, and is, voidable; and as plaintiff has sued to set it aside for the foregoing reasons, the Court holds that she has established her case, and the corpus of the Trust shall be distributed according to the interests of the Trus-tors. All questions and matters, except that the Trust be set aside and the corpus distributed, are expressly reserved to be treated in further proceedings here in the administration of a distribut-

ing receivership which will be ordered concurrently with this Memorandum.

Defendant has contended ratification, waiver and operation of the Statute of Limitations, because of certain amendments made to the Declaration, and certain consultations between plaintiff and attorneys in New Mexico.

The simple answer to all such questions is that the first legal consultations were had respecting substitution of beneficiaries upon plaintiff's death and did not go at all to the subject herein litigated.

Acts which will amount to undue influence arising from an elaborated brother-sister relationship are ordinarily of long rather than brief accumulation. Undue influence did not occur here in a day. It grew out of a succession of acts, long continued attitudes and a sequence of events which covered a long period of time. Conversely, [17] it did not terminate suddenly. Plaintiff was still under its influence when she first went to Mr. Jones (her New Mexico attorney) and her employment of him did not search out the vice in her brother's conduct or in the Declaration of Trust (which was in proper form—for many others but not this case). Plaintiff remained under the spell of undue influence until very shortly before the action was filed. She did not know the extent of advantage her brother had obtained until she asked him to renounce it. It was to her, a still not fully known quantity. She could not ratify what she did not understand.

Although it is clear that at all times before learn-

ing the extent to which she empowered defendant, plaintiff desired there be a trust, the facts compel a finding that the advantages given her brother in the trust indenture, and the rights surrendered to him by her therein, were not fully explained to her or understood by her. By reason of defendant's long standing attitude toward her, including his depreciation of her marriageability (except to an ill-motivated fortune hunter) she was, at the time she became a trustor, in that condition of subordination of her will to him which is colloquially described as "beaten down". Although she has now emerged from that state of being dominated, she came out of it slowly, just as an anesthetized person slowly returns to full control of conscious action. It cannot be said that she ratified a single one of defendant's acts after she became free from his domination, or understood fully the trust instrument which was so disadvantageous to her right to have funds for less conservative investment, if she so chose, and which gave him absolute control at high fees.

It is established that the three year period of [18] limitation of Section 338, Subsection 4, of the Code of Civil Procedure which provides that the cause is not "deemed to have accrued until the discovery" applies to cases of constructive fraud and undue influence. *Neet vs. Holmes*, 25 Cal. 2d 447; *Sears vs. Rule*, 27 Cal. 2d 131; *Victor Oil Co. vs. Drum*, 184 Cal. 226, 239.

Where there is a confidential relationship and the cestui places reliance on the fiduciary, the statute does not commence to run until the time of dis-

covery of the fraud. Hansen vs. Bear Film Company, Inc., 28 Cal. 2d 154.

Rottman vs. Rottman, 55 Cal. App. 624, states a rule (at p. 632) which the Court need not apply here but which answers many of defendant's contentions:

"* * * Another rule stated in the books is that the doctrine of laches is not strictly applied between near relatives * * *".

See also, Bailey vs. New England Mut. Life Ins. Co., 35 Fed. Supp. 1007, at p. 1010:

"* * * Accepting the agreement in the belief that the deceased was dealing honestly with her, she was justified in resting in that belief, and was not called upon then or thereafter to make independent inquiry as to his good faith. * * *". (Emphasis in quoted material.)

and Sibert vs. Shaver, 111 Cal. App. 2d 833; Craig vs. White, 187 Cal. 489; Feckenscher vs. Gamble, 12 Cal. 2d 482.

Counsel for plaintiff will prepare Findings of Fact, Conclusions of Law, and Judgment, which shall provide [19] for distribution of the estate as the interests of the parties in the corpus shall be determined by an accounting.

Dated: This 30th day of November, 1953.

/s/ ERNEST A. TOLIN,

U. S. District Judge

[20]

[Endorsed]: Filed November 30, 1953.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: Nov. 30, 1953, at Los Angeles, Calif.

Present: The Hon. Ernest A. Tolin, District Judge; Deputy Clerk: Wm. A. White; Reporter: Marie Zellner; Counsel for Plaintiff: Wm. P. Camusi; Counsel for Defendant: Jos. T. Enright.

Proceedings: Court hands counsel copies of its Memorandum of Decision, to Counsel. Court appoints Roy E. Hallberg as Receiver, fixes bond of said receiver in the amount of \$75,000, and orders that counsel for plaintiff draw formal order of appointment.

Filed memo of decision.

EDMUND L. SMITH,

Clerk

/s/ By WM. A. WHITE,

Deputy Clerk

[21]

[Title of District Court and Cause.]

ORDER APPOINTING RECEIVER

Whereas, the undersigned, Judge Presiding in the above entitled matter, has this day signed and filed a Memorandum of Decision decreeing and ordering the dissolution and termination of that certain inter vivos trust dated November 1, 1945 and its amendments thereto, all executed by and between plaintiff Lyda Tidwell and defendant Fred-

erick I. Richman, heretofore commonly known as the "Richman Trust," and referred to herein as the "former Richman Trust," and

Whereas, in the opinion of the court, it is necessary and desirable that a receiver be immediately appointed herein for the purposes of carrying out the decree and judgment of this court and in the best interests of all parties and for the protection and preservation of the assets of said former Richman Trust, and as hereinafter set out.

Now, Therefore, It Is Hereby Ordered that Roy E. Hallberg be, and he is hereby appointed, receiver of all the real and personal [22] property constituting the said former Richman Trust; that said property includes, among other things, five apartment houses, all located within the City of Los Angeles, County of Los Angeles, State of California, commonly known and designated as:

La Loma Apartments, 251 S. Olive, Los Angeles.

Oliver Cromwell Apartments, 418 S. Normandie, Los Angeles.

Canterbury Apartments, 1746 N. Cherokee, Los Angeles.

Fountain Manor Apartments, 5165 Fountain Ave., Los Angeles.

Western Arms Apartments, 1057 S. Western Ave., Los Angeles.

That the trust also includes, among other things, accounts receivable and funds in the name and/or control and/or possession of defendant Frederick I. Richman as trustee on deposit in the Union

Bank & Trust Company of Los Angeles, and elsewhere, and other assets which may hereinafter be determined or indicated by the court.

It Is Further Ordered that said receiver be, and he is empowered and directed to forthwith take possession of all of the above properties and assets and any other properties or assets which are, or are determined to be, a part of the said former Richman Trust; and said receiver is hereby empowered and directed to take possession of and to manage and operate said apartment houses and care for and protect the same and all other properties belonging to the said former Richman Trust, paying out of trust funds the operating expenses and proper and lawful liabilities of said property and former trust, or as ordered by the court herein.

It Is Further Ordered that said receiver be, and he is hereby empowered and directed, to forthwith take possession of all books of account, records, documents, cancelled checks, bank statements, correspondence and all files and records pertaining to the said former Richman Trust from the date of its inception to the date hereof and in the possession or under the control of defendant Frederick I. Richman, his agents, attorneys or representatives, and the said defendant Frederick I. Richman is directed, and he is ordered, to deliver forthwith all of said records and documents to the said receiver. [23]

It Is Further Ordered that said receiver give a sufficient bond in form and character satisfactory

to this court, and in the sum of \$75,000.00, conditioned upon the faithful performance of his duties as such receiver.

It Is Further Ordered that plaintiff Lyda Tidwell and her attorneys and defendants and their attorneys, and all other persons and each of them, be enjoined, and they are hereby restrained from disturbing possession of said receiver or in any manner molesting the said receiver of the said property, or interfering directly or indirectly, with the administration of the receivership.

It Is Further Ordered that said receiver shall continue in his duties until the distribution of the assets of the former Richman Trust to the parties as their interests shall appear or until further order of this court.

It Is Further Ordered that the receiver shall not distribute any part of the principal or income to either the plaintiff Lyda Tidwell or defendant Frederick I. Richman without specific order of this court.

It Is Further Ordered that the said receiver conduct and carry on until the further order of the court, the normal business and affairs of the said former Richman Trust and all matters incidental thereto or necessary in connection therewith, and that any of the parties hereto, including said receiver, may apply to the court from time to time for orders for the guidance or instructions of said receiver.

Dated this 30th day of November, 1953.

/s/ ERNEST A. TOLIN,

Judge

[24]

[Endorsed]: Filed November 30, 1953.

[Title of District Court and Cause.]

BOND OF RECEIVER

Know All Men By These Presents:

That we, Roy E. Hallberg, of Corona Del Mar, California, as Principal, and the Fidelity and Deposit Company of Maryland, a corporation duly incorporated under the laws of the State of Maryland, and authorized to act as Surety under the act of Congress approved August 13, 1894, whose principal office is located in Baltimore, State of Maryland, as Surety, are held and firmly bound unto the United States of America in the sum of Seventy-five Thousand and no/100 (\$75,000.00) Dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

The Condition of the Above Obligation Is Such, That, Whereas by an order of the United States District Court, for the Southern District of California, Central Division, duly made on the 1st day of December, 1953, in the above entitled action, the above Bounden Roy E. Hallberg was appointed Re-

ceiver therein, and he was ordered before entering upon the discharge of his duties as such Receiver, to [28] execute a bond according to law in said sum of Seventy-five Thousand and no/100 (\$75,000.00) Dollars;

Now, Therefore, if the said Roy E. Hallberg as such Receiver, shall faithfully discharge his duties in this action and obey the orders of the Court therein, then this obligation shall be null and void, otherwise to remain in full force and effect.

In Witness Whereof, the said Roy E. Hallberg has hereunto set his hand and seal and the said Company has caused this bond to be signed by its Attorney-in-Fact at Los Angeles, California, this 2nd day of December, 1953.

/s/ ROY E. HALLBERG,
[Seal] FIDELITY AND DEPOSIT COM-
PANY OF MARYLAND,

/s/ By ROBERT HECHT,
Attorney in Fact

Examined and recommended for approval as provided in Rule 8.

/s/ JOHN WHYTE,
Attorney

Approved this 2nd day of December, 1953.

/s/ ERNEST A. TOLIN,
District Judge [29]

Notary Public Verification attached. [30]

[Endorsed]: Filed December 2, 1953.

[Title of District Court and Cause.]

PETITION FOR AUTHORITY TO EMPLOY
COUNSEL

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

The verified petition of Roy E. Hallberg, respectfully represents and shows as follows:

1. Petitioner is the duly appointed, qualified, and acting Receiver of all the real and personal property constituting the former Richman Trust.

2. Petitioner represents that it is necessary for him to employ legal counsel on a general retainer to represent him as counsel herein and to advise him concerning his powers, duties, and obligations as Receiver, to assist him in connection with all legal matters necessary for the protection, preservation or management of the assets of the former Richman Trust, to assist him in connection with the preparation of petitions or reports to this Court, including petitions for instructions to the Receiver herein, and to act in any and all legal matters that may arise in the course of the administration of the assets of said former Richman Trust, when and if they do arise. [34]

3. It may be necessary for counsel to appear in and prosecute or defend suits or proceedings, if any, when they arise, and to take all necessary and proper steps in other matters and things involved or connected with the affairs of said former Richman Trust, if and when the necessity exists therefor.

4. Petitioner proposes, upon the granting of this petition, to employ the firm of FitzPatrick & Whyte and John Whyte as such counsel, and they have agreed to accept as compensation for any services rendered to petitioner as counsel such reasonable amount as may be allowed by this Court.

5. Your petitioner is satisfied from the affidavit of John Whyte attached hereto that said attorneys represent no interest adverse to him as Receiver, or to any other party hereto, in matters upon which said attorneys are engaged, and that the employment of said attorneys under a general retainer would be for the best interests of the former Richman Trust.

Wherefore, petitioner prays approval of the employment, as an expense of administration herein, of Messrs. FitzPatrick & Whyte and John Whyte as attorneys for petitioner as Receiver of all the real and personal property constituting the former Richman Trust.

/s/ ROY E. HALLBERG,
Receiver

State of California,
County of Los Angeles—ss.

John Whyte, being first duly sworn, deposes and says:

1. He is an attorney duly admitted to practice law in the above entitled Court and is a member of the firm of attorneys, to wit, Messrs. FitzPatrick & Whyte, whom the Receiver desires should represent

him in the above entitled proceeding and for whose appointment as such attorneys a petition is being presented and filed by the Receiver herein.

Affiant and the members of his firm have not been and are not employed by or connected with any of the parties to the above entitled action or with any other person having any interest adverse to the Receiver.

/s/ JOHN WHYTE

Subscribed and sworn to before me this 2nd day of December, 1953.

[Seal] /s/ ELEANOR HUMPHREYS,
Notary Public in and for said
County and State [35]

[Endorsed]: Filed December 2, 1953.

[Title of District Court and Cause.]

**ORDER AUTHORIZING RECEIVER TO
EMPLOY COUNSEL**

Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, having filed his verified petition for authority to employ counsel as an expense of administration herein, and it appearing for the reasons shown therein that it is necessary for the Receiver to employ counsel, and the name of counsel proposed to be employed being shown in said petition, and it further appearing to the satisfaction of this Court

that said counsel represent no interest adverse to the Receiver or to any of the parties in the above entitled action in the matters upon which the Receiver is to be engaged, and it further appearing that the employment of FitzPatrick & Whyte and John Whyte would be in the best interests of all parties hereto, and that this cause is one justifying employment of counsel on a general retainer, it is

Ordered that the Receiver herein be and he hereby is authorized and directed to employ FitzPatrick & Whyte and John Whyte of Los Angeles, California, as counsel on a general retainer as an expense of administration herein to represent him in the matters mentioned in said petition, their compensation [36] for any services rendered to be such reasonable amount as may be allowed by this Court.

/s/ ERNEST A. TOLIN,

Judge

[37]

Affidavit of Service by Mail attached.

[41]

[Endorsed]: Filed December 2, 1953.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: December 2, 1953, at Los Angeles, Calif.

Present: The Hon. Ernest A. Tolin, District Judge; Deputy Clerk: Wm. A. White; Reporter: Virginia Wright; Counsel for Plaintiff, Wm. P. Camusi; Counsel for Defendant: Joseph T. Enright, Joseph L. Wyatt and Walter L. Nossman.
Proceedings: Ex parte.

Attorney Enright moves the Court to hold the case in status quo, pending the defendants right to move for a new trial or for a rehearing on the Court's decision. Mr. Enright further moves that case be held in status quo during the month of December, relative to tax matters.

Defendant further moves for leave to "Lodge" Notice of Appeal and that Court fix the amount of supersedeas bond.

It is Ordered that defendant is granted leave to "Lodge" Notice of Appeal.

It Is Further Ordered that hearing to fix amount of supersedeas bond is continued to 3:00 p.m. of this date.

Lodged defendant's Notice of Appeal. Filed Bond of Receiver in the amount of \$75,000. Filed Oath of Receiver, Roy E. Hallberg.

Attorney Nossaman argues motion in opposition to appointment of Receiver, and Attorney for plaintiff replies to said argument.

It Is Ordered that this cause is continued to December 3, 1953 at 10:00 a.m. for further hearing.

Adjourn 4:10 p.m.

EDMUND L. SMITH,
Clerk

/s/ By WM. A. WHITE,
Deputy Clerk

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: December 4, 1953, at Los Angeles, Calif.

Present: The Hon. Ernest A. Tolin, District Judge; Deputy Clerk: Wm. A. White; Reporter: Virginia Wright; Counsel for Defendant: Joseph L. Wyatt.

Proceedings: Attorney Wyatt presents to court form of Notice of Appeal defendant will file from order of court entered 11/30/53 re: appointment of Receiver Pendente Lite and requests court to fix amount of supersedeas bond on appeal.

The court deems Mr. Wyatt's remarks as further argument in support of motion to vacate order appointing Receiver and enters order denying said motion and further denies the motion to fix amount of supersedeas bond on appeal.

EDMUND L. SMITH,
Clerk

/s/ By WM. A. WHITE,
Deputy Clerk

[40]

[Title of District Court and Cause.]

PETITION FOR AUTHORITY TO PAY
CHRISTMAS BONUSES

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

The verified petition of Roy E. Hallberg, by
John Whyte, one of his attorneys, respectfully represents and shows as follows:

1. Petitioner is the duly appointed, qualified and acting Receiver of all the real and personal property constituting the former Richman Trust.

2. Petitioner represents that in the interest of maintaining harmony, cooperation and good will on the part of the employees of the five apartment houses constituting the major portion of the assets of the former Richman Trust, it is desirable that he promptly pay to each of said employees a Christmas bonus. Said five apartment houses are as follows:

Canterbury Apartment Hotel, 1746 North Cherokee, Hollywood 28, California.

Fountain Manor Apartment Hotel, 5165 Fountain Avenue, Los Angeles 26, Calif. [43]

Oliver Cromwell Apartment Hotel, 418 South Normandie, Los Angeles 5, California.

Western Arms Apartment Hotel, 1057 South Western Ave., Los Angeles 6, California.

La Loma Apartment Hotel, 251 South Olive, Los Angeles 13, California.

About 41 employees are employed in said apartment houses, including a manager for each apartment house, maids, housekeepers, desk clerks, and maintenance men.

3. Petitioner proposes to pay Christmas bonuses to said employees in an aggregate amount not to exceed \$600. He proposes to pay a bonus of from \$25.00 to \$50.00 to the manager of each said apartment house, the exact amount of each such bonus to be determined by the manager's seniority, her value as a manager, and the size of the apartment house. He further proposes to pay bonuses of from \$5.00 to \$20.00 to the various maids, housekeepers, desk clerks, and maintenance men, the exact amount of each such bonus to be dependent upon their seniority and the quality of their work.

4. Petitioner further represents that Christmas bonuses in approximately the same aggregate amount have been paid to said employees for several years last past.

5. Petitioner is temporarily out of the County of Los Angeles, State of California. This petition is made and executed by and through John Whyte, one of his attorneys, at his request.

Wherefore, petitioner prays that the above entitled Court make and enter its order authorizing him to pay Christmas bonuses in an aggregate amount not to exceed \$600 to the employees of the five apartment houses constituting the major portion of the assets of the former Richman Trust, the

specific amount of each bonus to be fixed in the discretion of your petitioner.

/s/ ROY E. HALLBERG,

Receiver

/s/ By JOHN WHYTE [44]

Duly Verified. [45]

[Endorsed]: Filed December 18, 1953.

[Title of District Court and Cause.]

ORDER AUTHORIZING RECEIVER TO PAY
CHRISTMAS BONUSES

Upon reading and filing the verified petition of Roy E. Hallberg, Receiver, by John Whyte, one of his attorneys, for authority to pay Christmas bonuses, and good cause appearing therefor,

It Is Ordered that said Receiver be, and he hereby is, authorized to pay Christmas bonuses in an aggregate amount not to exceed the sum of \$600.00 to the employees of the five apartment houses constituting the major portion of the assets of the former Richman Trust, the specific amount of each bonus to be fixed in the discretion of said Receiver.

/s/ ERNEST A. TOLIN,

Judge [46]

Affidavit of Service by Mail attached. [47]

[Endorsed]: Filed December 18, 1953.

[Title of District Court and Cause.]

PETITION FOR AUTHORITY TO RENOVATE INDIVIDUAL APARTMENTS LOCATED IN FIVE APARTMENT HOUSES INCLUDED AMONG ASSETS OF FORMER RICHMAN TRUST

To the Honorable Ernest A. Tolin, Judge of the above entitled Court:

The verified petition of Roy E. Hallberg respectfully represents and shows as follows:

1. Petitioner is the duly appointed, qualified and acting Receiver of all the real and personal property constituting the former Richman Trust.

2. The major portion of the assets of the former Richman Trust consists of the following five apartment houses, to wit:

Canterbury Apartment Hotel, 1746 North Cherokee, Hollywood 28, Calif.

Fountain Manor Apartment Hotel, 5165 Fountain Avenue, Los Angeles 26, California.

Oliver Cromwell Apartment Hotel, 418 South Normandie, Los Angeles 5, California. [48]

Western Arms Apartment Hotel, 1057 South Western Avenue, Los Angeles 6, Calif.

La Loma Apartment Hotel, 251 South Olive, Los Angeles 13, Calif.

3. Many of the individual apartments located in each of said apartment houses, and particularly those located in the Western Arms Apartment Hotel and to a lesser extent those in the Oliver

Cromwell Apartment Hotel, are in need of repair and renovation. Specifically, many of said apartments need painting, many need new carpets, practically all need new floor and table lamps, nearly all of said individual apartments have old fashioned kitchen ranges concerning which the tenants constantly complain, many need new draperies, and the chairs and sofas in some apartments need to be upholstered and repaired.

4. Petitioner is informed and believes and therefore alleges that some individual apartments in each of said five apartment houses have not been painted or carpeted since the apartment house in which they are located became a part of the assets of the former Richman Trust. In this connection the Canterbury became a part of the assets of said former Richman Trust in 1948, the Fountain Manor in 1944, the Oliver Cromwell in 1950, the Western Arms in 1941, and the La Loma in 1949.

5. Conditions of disrepair vary greatly as among the individual apartments in each of the five apartment houses above mentioned. Petitioner is of the opinion that some apartments can be placed in good condition by an expenditure of not more than \$150. Petitioner is likewise of the opinion that the maximum cost of renovation for any one individual apartment should not exceed \$500. As a general rule, petitioner proposes to make such renovations only as individual apartments become vacant, although in a few instances it may become necessary to renovate an individual apartment while it is still

being occupied by a tenant in order to keep the tenant from vacating the apartment.

6. Petitioner represents to this Court that repair and renovation of the individual apartments in the manner and to the extent above mentioned [49] is essential to the continued efficient and economical operation of said apartment houses and to the conservation and preservation of the same for the following reasons, among others:

(a) The managers of said apartment houses have complained to petitioner that because of the poor condition of many apartments in their respective buildings, they are having trouble renting the same. At the present time there are approximately eight vacancies at the Western Arms, two or three vacancies at the Canterbury, and two or three vacancies at the Fountain Manor. If an apartment is allowed to remain vacant for any extended period of time, the resulting loss of income will soon exceed the cost of repair and renovation.

(b) In recent years there has been considerable new apartment house construction; consequently, competition for tenants has become keener. Naturally prospective tenants do not want a run-down apartment when a well-kept one of comparable size and location is available at only a slightly higher price.

(c) When apartments become run-down and thus must be rented at lower prices, they attract a poorer class of tenants which necessarily detracts from the desirability of the apartment house as a whole. The Oliver Cromwell, in particular, and to a lesser de-

gree the Canterbury, are located in areas which should attract a high class of tenants. These apartment houses should, if anything, be "up-graded" so as to take advantage of their location rather than be allowed to deteriorate.

(d) Poorly kept apartments tend to attract transients instead of the more desirable semi-permanent tenants. The difficulties encountered in keeping an apartment house filled to capacity are much increased when the house is compelled to cater to a transient trade.

Wherefore, petitioner prays that the above entitled Court make and enter its order authorizing him, as Receiver of all the real and personal property constituting the former Richman Trust, to renovate individual [50] apartments in the five apartment houses above mentioned in the manner hereinbefore specified and at a cost not to exceed the sum of \$500 for any one apartment.

/s/ ROY E. HALLBERG,
Receiver

This petition is granted following hearing in open Court, January 15, 1952.

/s/ ERNEST A. TOLIN,
Judge [51]

Duly Verified. [52]

[Endorsed]: Filed December 30, 1953.

[Title of District Court and Cause.]

CONSENT TO PETITION FOR AUTHORITY
TO RENOVATE INDIVIDUAL APART-
MENTS INCLUDED AMONG THE AS-
SETS OF FORMER RICHMAN TRUST

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

The verified petition of Roy E. Hallberg, request-
ing consent and authorization to renovate individual
apartments in apartment houses included among the
assets of the former Richman Trust has been this
day duly received by counsel for plaintiffs, and
after consideration, plaintiff Lyda Tidwell, by and
through her counsel, does hereby consent to the
granting of said petition upon the grounds and for
the reasons set forth in the petition of the said Roy
E. Hallberg.

That plaintiff notes this further evidence of the
unfortunate conditions which were allowed to come
about and exist in regard to the "management" of
said former trust assets by defendant Richman
and feels that it is apparently necessary, in accord-
ance with the Receiver's petition, for the proper
protection and preservation of her assets and one-
half interest in the former Richman Trust that said
petition be granted, [53] provided that said Re-
ceiver

1st. Expend only those sums and amounts to
carryout said work which he believes are necessary

and justified in maintaining or increasing the rental income;

2nd. Shall make a report each month, or as the court may direct, listing and covering the cost of such improvements or renovations for the past month or period; and

3rd. That such expenditures shall not be so great as to eliminate the possibility, in the not too distant future, of the regular distribution of some of the income from said former trust assets to the plaintiff, and as may be determined by the court.

Dated: January 8, 1954.

MARTIN, HAHN & CAMUSI

/s/ By WILLIAM P. CAMUSI,

Attorneys for Plaintiff [54]

Acknowledgment of Service attached. [55]

[Endorsed]: Filed January 8, 1954.

[Title of District Court and Cause.]

JUDGMENT FOR REVOCATION AND AVOID- ANCE OF TRUST, AND APPOINTMENT OF RECEIVER

The above entitled cause came on for hearing as to one issue which had been severed from others, before the Honorable Ernest A. Tolin, judge presiding, without a jury, and plaintiff appearing in person and by her attorneys, Laurence B. Martin and William P. Camusi, of Martin, Hahn & Camusi, and defendant Frederick I. Richman appearing in

person and by his attorneys, Joseph T. Enright and also Walter L. Nossaman and Joseph L. Wyatt, Jr., of Brady, Nossaman & Paulston, and the court having determined that a number of issues were involved in plaintiff's Complaint, all of which involved defendant Frederick I. Richman, and only some of which involved one or more different and other defendants, and the first basic issue being that of fraud and undue influence in the execution of the trust executed between plaintiff and defendant Frederick I. Richman, and said issue [79] involving plaintiff's first claim for revocation and avoidance of the trust and the amendments thereto, and said claim pertaining only to plaintiff and said defendant Frederick I. Richman, and said issue having been severed and tried separately in the furtherance of convenience and justice, and defendant Frederick I. Richman having agreed to the severance of said issue for trial, and the court having expressly directed the entry of final judgment herein upon plaintiff's claim for revocation and avoidance of said trust and the amendments thereto, upon an express determination that no just reason for delay exists in the entry of judgment on said claim, and the court being fully advised in the premises,

Now, Therefore, It Is Ordered, Adjudged and Decreed that the said inter vivos trust dated November 1, 1945, and executed by and between plaintiff Lyda Tidwell and defendant Frederick I. Richman, be and the same is hereby ordered to be void, dissolved, cancelled and revoked, and the same is of no further force or effect; and

It Is Further Ordered, Adjudged and Decreed that the first amendment to said trust, dated August 3rd, 1948, and that the second amendment to said trust, dated November 20th, 1950, and each of them, be and the same are hereby declared to be void, dissolved, cancelled and revoked, and that the same are of no further force or effect; and

It Is Further Ordered, Adjudged and Decreed that plaintiff is entitled to the ownership and distribution to her, free and clear of said trust and the amendments thereto, and each of them, of her interest in the assets which comprised said trust, together with such additional assets, if any, as plaintiff may be adjudged entitled to after an accounting; and

It Is Further Ordered, Adjudged and Decreed that a receiver shall be appointed to seize and hold all of the said assets of the said trust of November 1, 1945, pending an accounting, [80] and determination of the respective interests of the beneficiaries in the corpus of the Trust and/or pending the distribution of said assets to plaintiff and defendant as their interests may appear; and

It Is Further Ordered, Adjudged and Decreed that said receiver shall manage, operate and control the assets of the said trust in such a manner as to conserve and maintain insofar as possible, the status quo of the condition, quality and nature of said assets, and each of them, pending said accounting and pending distribution of said assets to the plaintiff and defendant as their interests may appear;

and this court retains jurisdiction of this cause for the purpose of enforcing this judgment and any further orders made herein, as well as for the purpose of making final disposition of other issues still pending in this cause; and all questions of the proportions in which plaintiff and defendant own the corpus and all questions of accounting are reserved.

It Is Further Ordered, Adjudged and Decreed that plaintiff is entitled to her costs and disbursements incurred in the sum of \$2,364.78.

Dated this 21st day of January, 1954.

/s/ ERNEST A. TOLIN,

Judge

[81]

[Endorsed]: Filed Jan. 21, 1954. Entered Jan. 22, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
RECEIVER MUST FILE HIS FIRST RE-
PORT AND PETITION FOR INSTRU-
CTIONS, AND SUPPORTING AFFIDAVIT

Upon reading and filing the affidavit of John Whyte attached hereto, and good cause appearing therefor:

It Is Ordered that the time within which Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, must file his first report and petition for instruc-

tions pursuant to the terms of Rule 18(b), Local Rules So. District, Calif., is hereby extended to and including March 20, 1954.

Dated: January 29, 1954.

/s/ ERNEST A. TOLIN,
Judge.

[82]

AFFIDAVIT OF JOHN WHYTE

John Whyte, being first duly sworn, deposes and says: That he is and at all times herein mentioned was duly admitted to practice in the above entitled Court; that he is a partner in the law firm of FitzPatrick & Whyte, 756 South Broadway, Los Angeles 14, California; and that he is one of the attorneys of record for Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust.

Under the terms of Rule 18(b) of Local Rules So. District, Calif., said Receiver is required, within sixty days after his appointment, to file with the above entitled Court a report and petition for instructions. Said Receiver was appointed on or about November 30, 1953. Said Receiver is unable to file said report and petition for instructions within said period of sixty days for the following reasons:

Affiant had expected to be available during virtually the entire week commencing January 24, 1954, for counsel with the Receiver and his bookkeeper, Mr. Roy Harrison, with regard to the preparation of said report and petition for instructions. However, affiant was unexpectedly detained in a

hearing before Judge Peirson Hall of the above entitled Court during several full days of said week and has accordingly been unable to devote sufficient time to the preparation of said report and petition for instructions.

Affiant has been informed by Mr. Roy Harrison, said Receiver's bookkeeper, that said Harrison has had considerable difficulty in assembling the accounting data which must be included in said report, notwithstanding the fact that he has been working up the same for a number of days. Said Harrison has further informed your affiant that he will be unable to have said accounting data in final form prior to some time early in the week commencing January 31, 1954.

Wherefore, affiant prays that the time within which said Receiver must file said report and petition for instructions be extended to and including February 8, 1954.

/s/ JOHN WHYTE

Subscribed and sworn to before me this 29th day of January, 1954.

[Seal] /s/ JOSEPH L. HERBERT,
Notary Public in and for said
County and State. [83]

[Endorsed]: Filed February 1, 1954.

[Title of District Court and Cause.]

NOTICE OF APPLICATION AND MOTION
FOR PERMANENT RECEIVER

To Frederick I. Richman, Defendant, and to Joseph T. Enright and Brady, Nossaman & Paulston, His Attorneys, and to all known creditors of the former Richman Trust, a correct list of the names and addresses of said creditors, who are being given notice hereof, being attached hereto, marked Exhibit "A" and expressly and by this reference incorporated herein and made an integral part of this notice:

You and Each of You Will Please Take Notice that plaintiff, Lyda Tidwell, will apply to and move the above entitled court, in Department 6 thereof, on the 15th day of February, 1954, at the hour of 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, for the appointment of a permanent receiver to take charge of and conserve the assets of the former Richman Trust, in such manner and upon such terms and conditions, and with such authority, as the court may determine fitting and proper.

The said application and motion will be made and based upon the [84] verified Complaint on file in this cause, and upon all of the papers, pleadings, affidavits, documents, minutes and all records on file or in evidence in the above entitled cause, and upon the Reporter's Transcript, and more particularly upon a Memorandum Decision signed by the Hon. Ernest A. Tolin, judge of the above entitled court

and dated November 30, 1953, and upon the hearings or proceedings incident to and the Order appointing a Temporary Receiver of said former Richman Trust, duly signed on November 30, 1953, and on the Findings of Fact and Conclusions of Law and the Judgment in favor of plaintiff for the Revocation and Avoidance of the Trust and Appointment of Receiver, all duly signed by the Honorable Court in the above entitled cause on the 21st day of January, 1954, and now in file in said case, and finally, upon any affidavits as may be filed herein, provided plaintiff deems the same to be either necessary or appropriate.

At the time of the hearing and determination of said Motion and Application, plaintiff will request and seek the appointment of Roy E. Hallberg to act as Permanent Receiver, he having heretofore been designated as Temporary Receiver in the above entitled cause.

Dated: February 4, 1954.

MARTIN, HAHN & CAMUSI,
/s/ By LAURENCE B. MARTIN,
Attorneys for Plaintiff. [85]

EXHIBIT "A" ON MOTION FOR PERMANENT RECEIVER

List of All Known Creditors of Former Richman Trust, Both Specific and Contingent, at Close of Business on February 2, 1954.

Arrowhead & Puritas Waters, Inc., 1566 East Washington Boulevard, Los Angeles 21, California.

Arden Farms Co., 103 South Hamel Road, Los Angeles 48, California.

Ace Specialty Company, 5285 West Pico Boulevard, Los Angeles, California.

Barker Bros. Corporation, 818 West 7th Street, Los Angeles, California.

H. L. Byram, Tax Collector, Hall of Justice, Los Angeles 12, California.

California Refrigeration Maintenance Co., 5905 Melrose Avenue, Los Angeles 38, California.

Cascade Laundry, 4414 Santa Monica Boulevard, Los Angeles 29, California.

Certified Paint Co., 4459 Sunset Boulevard, Los Angeles 27, California.

City Curtain & Blanket Cleaning Co., 5155 South Western Avenue, Los Angeles 37, California.

Columbia Pest Control Co., 101 North Virgil Avenue, Los Angeles 4, California.

Crescent Refining & Oil Co., 2460 East Twenty-Eighth Street, Los Angeles 58, California.

Consolidated Mattress Co., 6912 Santa Monica Boulevard, Los Angeles 38, California.

Director of Internal Revenue, Federal Building, Los Angeles 12, California.

Department of Employment, 1025 P Street, Sacramento 14, California.

Department of Water & Power, 207 South Broadway, Los Angeles, California.

Robert H. Dulley and Co., 3750 West Sixth Street, Los Angeles 5, California.

Elevator Maintenance Company, Ltd., 1316 Glendale Boulevard, Los Angeles 26, California.

Jesse M. Few Electric, 1515 West Seventh Street, Los Angeles 17, California.

Frazer Bros. Oil-Burner Company, 1044 South Western Avenue, Los Angeles 6, California.

Charles R. Hadley Co., 330 No. Los Angeles Street, Los Angeles, California.

Red Lilly Plumbing, 2316 Hyperion Avenue, Los Angeles 27, California.

Los Angeles Soap Co., 617 East First Street, Los Angeles 54, California.

Murphy Bed Sales Company, 8048 West Third Street, Los Angeles, California.

Mutual Benefit Life Insurance Company and its correspondent Pacific Mortgage Corp., c/o Pacific Mortgage Corporation, 210 West Seventh Street, Los Angeles 14, California.

A. F. McConnell, 418 South Normandie Avenue, Los Angeles 5, California. [86]

Walter C. Peterson, City Clerk, License and Sales Tax Division, Room 1, City Hall, Los Angeles 12, California.

Pacific Telephone and Telegraph Company, 740 South Olive Street, Los Angeles, California.

Paramount Cleaning & Dyeing Service, 4368 West Third Street, Los Angeles 5, California.

Pfeiffer Upholstering Company, 4812 So. Western Avenue, Los Angeles, California.

Frederick I. Richman, 926 Subway Terminal Building, 417 South Hill Street, Los Angeles, California.

Simpson's Wholesale Lighting Supplies, 1906 Third Avenue, Los Angeles 18, California.

Southern California Gas Company, 810 South Flower Street, Los Angeles, California.

Western Union, 741 South Flower Street, Los Angeles 17, California. [87]

Affidavit of Service by Mail attached. [88]

Acknowledgment of Service attached. [89]

[Endorsed]: Filed Feb. 4, 1954.

[Title of District Court and Cause.]

STATEMENT OF REASONS AND POINTS
AND AUTHORITIES IN SUPPORT OF
APPLICATION AND MOTION FOR PER-
MANENT RECEIVER

The numerous reasons justifying and requiring the appointment of a receiver in accordance with the Findings of Fact and Conclusions of Law and Judgment, heretofore signed and filed, are so apparent as to not require any detailed statement, since they are all so well known to the court and respective parties. The Judgment and Findings are reason enough. Suffice it to say that the irreconcilable differences between the parties, the nature of the charges made and proven as against the defendant Richman, and the necessity of protecting and preserving the estate and interest of plaintiff in the former trust property until the matter may be finally disposed of one way or the other, all are adequate enough for the imperative urgency of a permanent receiver.

An additional reason for the appointment of the present receiver as a permanent receiver is because of his familiarity with the properties and the fact that he has now had sufficient experience to know the requirements and problems incident to the management, care and preservation of these [90] properties. Many of the reasons justifying and requiring the appointment of a receiver in accordance with the judgment on the issue already determined are the same as, or akin to, the reasons detailed in the Points and Authorities heretofore served and filed in support of the appointment of a temporary receiver or a receiver pendente lite. Rather than clutter the record with repetitious material, we respectfully refer the court and the parties to the Memoranda of Points and Authorities previously filed in support of our application for a receiver, and by this reference incorporate the points and authorities mentioned in said briefs respecting said matter herein, as though set forth here in full.

A receivership is necessary to protect the interests of all parties to a joint venture or partnership pendente lite or after judgment.

Moore vs. Oberg, 61 C. A. (2d) 216

McNeil vs. Graves, 92 C. A. (2d) 371

Armbrust vs. Armbrust, 75 C. A. (2d) 272.

A receiver may be appointed to carry out or protect the integrity of a judgment rendered:

In 75 C. J. Sec. 692, it is stated:

“The court may in its final decree on the merits appoint a receiver as a proper means of enforcing

the decree and for the purpose of protecting and preserving the property so that the decree may be effective to the fullest extent of the rights which it intended to fix."

In accord: *Hunt Prod. Co. vs. Burrage*, 104 S. W. (2d) 84; *Edwards vs. Edwards*, 36 S. W. 1080, 14 Tex. Civ. App. 87; *Stockton vs. N. J. Cent. R. Co.*, 25 Atl. 942, 15 N.JEq. 489.

At page 1104 of 4 C. J. Sec. it is said:

"The conservation or preservation of property pending an appellate proceeding may be effected through a receiver appointed for that purpose."

In accord: *McCarthy vs. Kurkjian*, 232 Pac. 161, 69 C. A. 682. [91]

Power is inherent in the Federal Court to preserve property in controversy by appointment of a receiver.

In re *Reisenberg*, 208 U. S. 90, 109; 52 L. Ed. 403; 28 S. Ct. 219; *Ward vs. Central Trust Co. of Ill.*, 252 Fed 127.

Respectfully submitted,

MARTIN, HAHN & CAMUSI,
/s/ By LAURENCE B. MARTIN,
Attorneys for Plaintiff. [92]

Acknowledgment of Service attached. [93]

[Endorsed]: Filed Feb. 4, 1954.

[Title of District Court and Cause.]

DEFENDANTS' EXHIBIT C

STIPULATION

Whereas, plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, have arrived at terms of an agreement which will result, when completed, in the final settlement and disposition of the above entitled matter, and,

Whereas, Lyda Tidwell, plaintiff, under said agreement, is to purchase all of defendant, Frederick I. Richman's share in the assets referred to in this trial as the "Richman Trust", and hereinafter referred to as the Richman Trust, and Lyda Tidwell already having paid to said Frederick I. Richman the sum of One Hundred Thousand Dollars (\$100,000.00) in pursuance of the terms of the above said agreement, and the parties hereto desiring also, in accordance with the terms of said agreement, that the Receiver be relieved of his responsibilities in connection with the management, control and possession of the assets of the said Richman Trust, with the exception of money in bank and now under the control of the Receiver; [94]

Now, Therefore, It Is Hereby Stipulated by and between counsel for plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, that the Receiver, Roy E. Hallberg, be relieved of the possession, control and management of the assets of the said Richman Trust, excepting funds in bank and under the control of said Receiver, as of five o'clock Sunday, February 28, 1954, and that plaintiff, Lyda Tidwell,

be given possession, control and management of all the assets of the Richman Trust with the exception of money in bank, as above stated, and that all books and records now in the possession of the Receiver, Roy E. Hallberg, remain in their present location at the Oliver Cromwell Apartments, 418 South Normandie, Los Angeles, California, and that the same be not removed therefrom pending final settlement of the above entitled matter, and that the court make an order for the purpose of carrying this Stipulation into effect.

Dated: February 26, 1954.

BRADY, NOSSAMAN &

PAULSTON and

JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT,

Attorneys for defendant, Frederick
I. Richman.

MARTIN, HAHN & CAMUSI,

/s/ By WILLIAM P. CAMUSI,

Attorneys for plaintiff,

Lyda Tidwell.

[95]

[Endorsed]: Filed Feb. 26, 1954.

[Title of District Court and Cause.]

DEFENDANTS' EXHIBIT D

ORDER

Whereas, plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, have agreed to the terms of a settlement disposing of the above entitled matter,

and said plaintiff and defendant are desirous of relieving the Receiver of possession, control and management of the assets formerly designated and referred to as the Richman Trust, with the exception of money in bank and under the control of the Receiver;

Now, Therefore, It Is Hereby Ordered, that the Receiver, Roy E. Hallberg, shall be relieved of his active duties of management, control and possession of the assets known as the Richman Trust, as of five o'clock p.m., Sunday, February 28, 1954, and that the said Receiver, Roy E. Hallberg, his agents and employees, and all other agents, servants and employees of the Richman Trust, give over control and possession to Lyda Tidwell, plaintiff, of all the assets of the said Richman Trust, excepting money in bank and under the control of the said Receiver, but [97] including all other said assets of the Richman Trust and the following apartment houses and their contents:

La Loma, located at 251 South Olive Street, Los Angeles, California;

Fountain Manor, located at 5165 Fountain Avenue, Los Angeles, California;

Oliver Cromwell, located at 418 South Normandie Avenue, Los Angeles, California;

Western Arms, located at 1057 South Western Avenue, Los Angeles, California; and

Canterbury, located at 1746 No. Cherokee, Los Angeles, California.

It Is Further Ordered, that plaintiff, Lyda Tidwell, shall have exclusive possession, control and management of the above described assets, beginning at 5 o'clock p.m., Sunday, February 28, 1954.

It Is Further Ordered, that the books and records pertaining to the Richman Trust and the assets therein shall be given into the possession and control of plaintiff, Lyda Tidwell, but shall remain in their present location in the Oliver Cromwell Apartments, and neither plaintiff, Lyda Tidwell nor defendant, Frederick I. Richman, nor any other person, shall remove the said books and records, or any part thereof, from said location until further order of court, and all records shall remain in their present status except for legitimate entries and transactions to be made therein in the course of the management of the assets formerly known as the Richman Trust.

It Is Further Ordered, that said books and records shall be made available at all reasonable times to the said Receiver, Roy E. Hallberg, for the purpose of preparing his accounting for presentation to the court.

Dated: February 26, 1954.

/s/ ERNEST A. TOLIN,
Judge

[98]

[Endorsed]: Filed Feb. 26, 1954.

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF FEES TO
ATTORNEYS FOR RECEIVER

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

Come now Messrs. FitzPatrick & Whyte and John Whyte, as attorneys for Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, and for their petition for allowance of fees for legal services heretofore necessarily performed by them for and on behalf of said Receiver from and after November 30, 1953, to and including March 17, 1954, respectfully represent and show as follows:

1. Richard FitzPatrick and John Whyte are and at all times herein mentioned were attorneys duly admitted to practice law in the above entitled Court, and they are and at all times herein mentioned were engaging as co-partners in the general practice of the law under the firm name of FitzPatrick & Whyte, with offices at 756 South Broadway, in the City of Los Angeles, State of California. Richard FitzPatrick was duly admitted to practice law in all courts of the State of California in December 1917, and ever since [100] September 1919, he has practiced law continuously in this state. John Whyte was duly admitted to practice law in all courts of the State of California in January 1941, and ever since that time, with the exception of a period commencing in July 1941, and ending in December 1942,

he has practiced law continuously in this state.

2. Petitioners FitzPatrick & Whyte and John Whyte are and ever since December 2, 1953, have been the duly authorized and acting attorneys for Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, said Roy E. Hallberg being sometimes hereinafter referred to as "the Receiver." In this connection petitioners allege that on December 2, 1953, the Receiver duly petitioned this Court for authority to employ legal counsel to advise him concerning his powers and duties as Receiver, to assist him in connection with all legal matters necessary for the protection, preservation or management of the assets of the former Richman Trust, to assist him in connection with the preparation of petitions or reports to this Court, and to act generally in any and all legal matters that might arise in the course of his administration of said assets. On December 2, 1953, by order duly signed and filed, this Court authorized and directed the Receiver to employ Messrs. FitzPatrick & Whyte and John Whyte of Los Angeles, California, as legal counsel on a general retainer and as an expense of administration herein, to represent him in the matters specified in the above mentioned petition, and the Receiver did immediately employ said counsel.

3. In anticipation of and pursuant to said employment above referred to in Paragraph 2, petitioners have necessarily performed legal services for and on behalf of the Receiver from and after November 30, 1953, to and including March 17, 1954,

in connection with the conduct and carrying on by the Receiver of the normal business and affairs of the former Richman Trust and matters incidental thereto. Petitioners have devoted a total of 91 hours of attorneys' time to the performance of said legal services as shown on daily time sheets kept by attorneys in the offices of FitzPatrick & Whyte. Of this total of 91 hours of attorneys' time, 88.8 hours are allocable to the services [101] of John Whyte and 2.2 hours are allocable to the services of Richard FitzPatrick.

4. The nature of said legal services which have been necessarily so performed by petitioners is likewise shown on said daily time sheets and is as follows:

Nature of Legal Services Performed

Date—1953

November 30—Conference with Hallberg re his appointment as Receiver. Study of Judge Tolin's memorandum of decision in the above entitled action. Conference with Judge Tolin and Hallberg re duties of Receiver and his attorneys.

December 1—Conference with Hallberg and officers of Union Bank & Trust Co. re change of former Trust's bank account to name of Hallberg, as Receiver of Assets of Former Richman Trust and re proper accounting for checks written by plaintiff Tidwell or defendant Richman prior to Hallberg's appointment as Receiver. Whyte accompanied Hallberg on visits to La Loma, Fountain Manor, Canterbury and Western Arms Apartment Hotels where they conferred with the managers re change

in administration of former Trust properties, collection of rents, etc.

December 2—Prepared petition and order for appointment of FitzPatrick & Whyte and John Whyte as attorneys for Receiver. Conference with Hallberg re his bond as Receiver and making arrangements with Fidelity and Deposit Co. of Maryland re issuance of bond. Telephone call to Camusi (one of plaintiff's attorneys) for information re latest developments in appointment of Receiver. Appearance in Judge Tolin's chambers and presentation to him of Receiver's petition for authority to employ counsel and order employing said counsel—order signed and filed. [102]

December 3—Conference at Richman's office among Messrs. Richman, Harrison, Hallberg and Whyte re assets comprising former Richman Trust and manner in which trust accounts had been kept. Arranging with Union Bank & Trust Co. for honoring of checks drawn by Richman. Advising Receiver re insurance matters and telephone call to Robert Dulley, insurance broker.

December 7—Telephone call from Camusi requesting information on Receiver's activities. Telephone call to Harrison, who had been hired as a bookkeeper by the Receiver, re progress being made toward orderly administration of receivership.

December 10—Telephone call to Harrison for report on progress being made in setting up receivership books, paying taxes, etc.

December 12—Telephone call from Harrison re numerous problems connected with receivership.

December 16—Telephone call from Camusi inquiring about progress of receivership. Telephone call from Mrs. Hallberg re problems incident to opening new bank account with branch of Citizens National Bank & Trust Co. and telephone conference with official of that bank.

December 17—Telephone call from Hallberg re petition for authority to pay Christmas bonuses and re petition for authority to renovate individual apartments in various apartment buildings.

December 18—Telephone calls to and from Hallberg to obtain facts necessary for preparation of petition for authority to pay Christmas bonuses. Preparation of said petition. Telephone call from Camusi asking for information concerning progress of receivership. Telephone call from Hallberg re above mentioned petition. Presentation of petition for authority to pay Christmas bonuses and order thereon to [103] Judge Tolin in chambers—order signed and filed. Telephone call to Harrison directing him to issue bonus checks. Conference with Mrs. Hallberg re factual data needed to prepare petition for authority to renovate individual apartments. Telephone call from Harrison re manner of paying Christmas bonuses.

December 21—Telephone call from Hallberg re preparation of petition for authority to renovate individual apartments. Consideration of local Federal District Court rules re reports and accounts to be rendered by the Receiver.

December 22—Telephone call from Hallberg re

preparation of petition for authority to renovate individual apartments and other matters.

December 23—Preparation of petition for authority to renovate individual apartments. Telephone call to Hallberg for information needed for said petition.

December 24—Conference with Hallberg at Oliver Cromwell Apartment Hotel re petition for authority to renovate individual apartments, transfer of fire insurance policies to a mutual company, Receiver's first report to be filed with Court, carrying out of Richman's contracts to purchase smog control incinerator equipment, bookkeeping problems, and other matters.

December 28—Telephone calls to and from Harrison re installation of smog control incinerator equipment at Canterbury and Oliver Cromwell apartments and re handling of petition for authority to renovate individual apartments.

December 27—Study of files with reference to installation of smog control incinerator equipment at Canterbury and Oliver Cromwell apartments and consideration of liability of Receiver to carry out Richman's contracts with Air Pollution Control, Inc. for purchase and installation of said [104] equipment.

December 29—Taking petition for authority to renovate individual apartments to Judge Tolin's chambers. Telephone call to Harrison re court order requiring Receiver to permit plaintiff's appraisers to visit apartment buildings and plaintiff's accountants to inspect books.

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January 4—Conference with Judge Tolin in chambers re contents of first report to be submitted by Receiver, petition for authority to renovate individual apartments, proposed petition for authority to inventory assets, and other matters. Telephone calls from Mrs. Hallberg re these matters. Telephone call to Harrison re problems incident to inventorying all furniture and fixtures in the apartment buildings. Telephone calls to Camusi and to Enright (one of defendant's attorneys) requesting them to agree not to require a detailed inventory of every item of furniture and fixtures in the apartment houses—they both stated it was unnecessary.

January 5—Telephone call from Mrs. Hallberg re status of petition for authority to renovate individual apartments and necessity for inventorying furniture and fixtures. Conference with Judge Tolin in chambers re said petition for authority to renovate. Telephone call to Hallberg re forthcoming hearing on petition for authority to renovate and visit of plaintiff's appraisers to apartment buildings.

January 8—Conference with Mrs. Hallberg re inspection of apartment houses being made by plaintiff's appraisers and re inspection of receivership books to be made by plaintiff's accountants. Telephone call to Camusi re these matters. Telephone call from Enright re hearing on petition for authority to renovate individual apartments and re Hallberg's background as a businessman and apartment house manager. [105] Telephone calls from

Camusi re inspection of books by his accountants and telephone call to Mrs. Hallberg re this subject.

January 9—Telephone call from Hallberg re possible errors made by Richman in his accounting for trust properties and possibility of tax refunds as a result thereof—also re first report to be made by Receiver, renovation of individual apartments, and other matters.

January 11—Telephone call from Hallberg re possibility of tax refunds on account of items charged by Richman as improvements rather than expenses.

January 15—Telephone calls from Lawrence Martin (one of plaintiff's attorneys) and from Camusi re matters to be considered at hearing on Receiver's petition for authority to renovate individual apartments. Conference with Hallberg in preparation for said hearing. Court appearance re hearing on said petition—petition granted.

January 19—Preparing draft of Receiver's report. Telephone call to Harrison re data to be included therein.

January 25—Instructing and working with Harrison on preparation of schedules to be attached to Receiver's report. Drafting Receiver's report.

January 26—Conference with Hallberg re facts needed for preparation of his report. Telephone call from Camusi re proposed meeting with Hallberg and Whyte to consider prospects for future income from apartment houses.

January 27—Telephone call from Harrison re problems involved in preparing Receiver's report—Harrison also reported on criminal citation issued

for alleged violation of California Health and Safety Code in connection with operation of incinerator at Oliver Cromwell.

January 28—Conference with Harrison re preparation of accounting [106] data to be incorporated in Receiver's report.

January 29—Telephone call from Harrison re criminal citation in connection with incinerator at Oliver Cromwell. Preparation of ex parte order and affidavit extending time for Receiver to file his report and procuring Judge Tolin's signature thereon. Telephone call from Mrs. Hallberg re efforts being made to dismiss above mentioned criminal citation. Telephone call to Mr. Tow in office of Air Pollution Control District re said criminal citation. Telephone conversation with Judge Tolin re Receiver's report—the Judge decided to modify Rule 18(b) of the local Federal District Court rules so as to postpone filing thereof until March 20, 1954, in order that it might cover a full three months period. Telephone call to Harrison re delay in filing above mentioned report—he requested advice re problem of tenant who owed rent and had left clothes in his apartment. Conference with Hallberg re his report. Telephone call to Camusi re delay in filing said report.

February 1—Appearance in Department 30A of Los Angeles Municipal Court re arraignment of Mrs. McConnell, manager of Oliver Cromwell, she being a defendant in the criminal action brought by the City of Los Angeles for alleged violation of California Health and Safety Code resulting from smoke issuing from incinerator at Oliver Cromwell

—arraignment set over until February 23. Conference with Mr. Tow of Air Pollution Control District re said criminal action. Telephone call to Harrison urging him to have Air Pollution Control, Inc. proceed immediately with installation of smog control equipment at Canterbury. Telephone call from Mrs. Hallberg re result of court hearing. Dictating draft of Receiver's report and revising same. [107]

February 2—Telephone call from Harrison re tax returns to be filed by Receiver. Examination of defendant's moving papers re new trial. Telephone calls to and from Camusi re tax problems and necessity, if any, for moving for appointment of a permanent receiver. Telephone call to Harrison requesting names of known creditors to be notified of hearing on motion for appointment of Hallberg as a permanent receiver. Telephone call from Hallberg re tax problems. Conference with Judge Tolin in chambers re appointment of Hallberg as a permanent receiver.

February 3—Telephone call to Camusi re his making motion for appointment of Hallberg as a permanent receiver. Telephone calls from Harrison re persons to be included in list of known creditors. Studying letter from Enright as to who should petition for distribution of income. Telephone call from Mrs. Hallberg re tax problems, removal of part of parapet at Canterbury, and smog control matters. Conference with Mrs. Hallberg re such problems as smog control, desirability of selling Western Arms and Fountain Manor, tax returns, etc. Telephone conversation with Tow of Air Pollution Control

District re proposed conference with City Attorney's office and possible inability of Air Pollution Control, Inc. to perform their contract for installation of incinerator equipment at Canterbury. Telephone call to Air Pollution Control, Inc., re their ability to install smog control incinerator equipment promptly at Oliver Cromwell and Canterbury. Delivering list of known creditors to Camusi and obtaining from him copy of trust instrument for use in determining who should file 1953 income tax return.

February 4—Telephone call from Harrison re additions to list of known creditors and passing on of this information to [108] Camusi. Telephone call from Enright and discussion of smog control problems, removal of parapet at Oliver Cromwell and other matters. Telephone call from Mrs. Hallberg re tax and smog control matters. Letter to Air Pollution Control District re progress being made toward installation of incinerator equipment. Telephone call from Harrison re problems of tenants who haven't paid rent, tax information, and other matters.

February 6—Checking California lien law applicable to apartment houses in order to advise Harrison what to do with clothing left by guest with unpaid bill at Oliver Cromwell.

February 8—Telephone call to Harrison advising him what to do about guest with unpaid bill at Oliver Cromwell. Revising draft of Receiver's report.

February 9—Conference at City Attorney's office among a Deputy City Attorney and Messrs. Tow,

Enright, Hallberg and Whyte re above mentioned criminal complaint charging violation of California Health and Safety Code on account of smoke from incinerator at Oliver Cromwell — complaint dismissed.

February 10—Letter to Camusi showing income and expense of former Richman Trust for 1953. Revising Receiver's report and petition for fees.

February 12—Telephone call from Camusi re tax returns and hearing on motion for appointment of Hallberg as a permanent receiver. Telephone call from Harrison re his discharge by Hallberg.

February 13—Telephone call to Hallberg and discussion of problems incident to hearing on motion for his appointment as a permanent receiver, termination of Harrison's employment, and necessity for preparing and filing a schedule of known creditors within five days after hearing on his appointment [109] as a permanent receiver.

February 15—Court appearance re hearing on motion to make Hallberg a permanent receiver—this motion, together with defendant's motions for a new trial, etc., set over until March 8. Telephone call to Mrs. Findeisen, the new bookkeeper, not to prepare list of known creditors. Telephone call from Mrs. Hallberg re removal of parapet at Oliver Cromwell. Drafting Receiver's report and petition for allowance of fees.

February 16—Drafting petition for allowance of attorney's fees.

February 17—Dictating and correcting draft of petition for allowance of attorneys' fees. Dictating

notice of hearing on Receiver's report, his petition for allowance of fees, and petition of his attorneys for allowance of fees.

February 18—Revising draft of Receiver's report.

February 25—Telephone call from Camusi re termination of receivership by settlement of case. Telephone call to Hallberg reporting on this development.

February 26—Attending conference in Judge Tolin's chambers re settlement of case. Telephone call from Mrs. Hallberg re results of said conference.

February 27—Revising Receiver's report and petition for fees, as well as petition for fees to attorneys for Receiver, as necessitated by Court's order of February 26, relieving Receiver of his duties of active management as of February 28, 1954.

March 1—Conference with Mrs. Hallberg and bookkeeper at Oliver Cromwell re preparation of schedules to be attached to Receiver's report, re summary of Receiver's operations for January and February 1954, and re problems connected with turn-over of assets to Mrs. Tidwell. Telephone call to Camusi re problems connected with turn-over of assets [110] to Mrs. Tidwell, payment of bills, etc. Telephone call to Enright re schedule attached to Receiver's report showing creditors and amounts of their claims.

March 2—Dictating and revising statement of services performed by Receiver during January and February 1954, to be incorporated in his report. Telephone call from Camusi requesting that documents evidencing title to various properties be

turned over to Mrs. Tidwell, and re Receiver's accounting. Telephone calls to and from Mrs. Hallberg re documents to be turned over to Camusi. Details incident to preparation of Receiver's report. Dictating statement of services rendered by attorneys for Receiver for inclusion in their petition for fees. Telephone call to Camusi re delivery of title documents to his office.

March 4—Telephone calls to and from Mrs. Hallberg re payment of bills, particularly those accruing after February 28, 1954, and re turn-over of Richman's former files. Telephone calls to Camusi and Enright re these matters.

March 5—Telephone call to Mrs. Findeisen requesting information needed for Receiver's report.

March 7—Conference with Receiver and Mrs. Hallberg re problems incident to Receiver's final accounting and preparation of schedules to be attached to his report.

March 8—Dictating additional material to be incorporated in Receiver's report.

March 9—Incorporating additional material in Receiver's report and petition for fee. Telephone call to Camusi re closing of Receiver's books and payment of bills received after March 1, 1954.

March 10—Conference with Mrs. Hallberg and Mrs. Findeisen, the bookkeeper, at the Oliver Cromwell re Receiver's final report and preparation and format of schedules to [111] be attached thereto. Incorporating new material in draft of Receiver's report.

March 11—Revising Receiver's report and peti-

tion for fee as well as notice of hearing on various petitions and reports of the Receiver and his attorneys.

March 12—Adding material to Receiver's report and telephone call to Mrs. Hallberg for data to be incorporated therein. Telephone calls from Mrs. Hallberg re progress being made on schedules to be attached to Receiver's report.

March 13—Going over draft of his report and schedules to be attached thereto with the Receiver.

March 15—Conference with Judge Tolin in chambers re petition of Receiver's attorneys for allowance of fees. Revising said petition as well as Receiver's report and petition for fee.

March 17—Telephone conference with Camusi re closing of Receiver's books and re the reports and petitions to be filed by him and his attorneys. Proofreading final copies of Receiver's report and petition for fee and assembling schedules to be attached thereto. Proofreading final copies of petition of Receiver's attorneys for fees. Telephone call to Fidelity and Deposit Company of Maryland re possible rebate on premium paid for Receiver's bond.

5. Petitioners desire to call the Court's attention to the fact that certain of the legal services hereinabove referred to are in the nature of extraordinary, rather than ordinary, services. Into this category would fall the services rendered in connection with defending the Receiver and his agents against the criminal action commenced in the Municipal Court of the County of Los Angeles Judicial Dis-

trict by the Air Pollution Control District for alleged violation of sections of the California Health and Safety Code on [112] account of smoke issuing from the incinerator at the Oliver Cromwell. Through the joint efforts of petitioners and the Receiver, the Air Pollution Control District and the Los Angeles City Attorney's office were persuaded to dismiss this action. This smoke condition resulted from a failure to install smog control devices in the incinerators at the Oliver Cromwell and at the Canterbury, a duty which Frederick I. Richman, the managing agent and a trustee of the former Richman Trust, should have performed during his long administration of the assets of said Trust. Instead, this problem was passed on to the Receiver who was forced to defend a criminal complaint charging violations of law for which he was in no way responsible.

6. Petitioners allege that the reasonable value of their ordinary legal services as in Paragraph 4 above set forth, exclusive of the extraordinary services hereinabove referred to in Paragraph 5, is the sum of \$3,000. Petitioners do not wish to indicate any figure as representing the reasonable value of said extraordinary services but prefer that this Court should determine in its discretion what additional amount should be awarded to petitioners for the performance of said extraordinary legal services. With reference to this matter of fixing the reasonable value of their legal services, petitioners adopt and incorporate herein by reference each and every allegation set forth in Paragraph 8 of the first

and final report of Receiver and petition for allowance of fee to Receiver filed concurrently herewith.

Wherefore, petitioners pray that this Court make and enter its order fixing and allowing the sum of \$3,000.00 as a reasonable attorneys' fee to FitzPatrick & Whyte and John Whyte, the attorneys for the Receiver herein, for the ordinary legal services heretofore necessarily performed by them for and on behalf of said Receiver from and after November 30, 1953, to and including March 17, 1954, together with such further sum as this Court may in its discretion determine to be a reasonable attorneys' fee for the extraordinary legal services necessarily performed by them for and on behalf of the Receiver during the same period, and that said order authorize and direct the Receiver to pay said sum or sums forthwith to FitzPatrick & Whyte from funds on deposit in the Third and Western Branch of the [113] Citizens National Trust & Savings Bank of Los Angeles to the account of Roy E. Hallberg, as Receiver of the Assets of the former Richman Trust.

Dated: March 18, 1954.

FITZPATRICK & WHYTE,
JOHN WHYTE

/s/ By JOHN WHYTE,
Petitioners

[114]

Duly Verified.

Acknowledgment of Service by Mail attached.

[Endorsed]: Filed March 18, 1954. [115]

[Title of District Court and Cause.]

FIRST AND FINAL REPORT OF RECEIVER
AND PETITION FOR ALLOWANCE OF
FEE TO RECEIVER

To the Honorable Ernest A. Tolin, Judge of the
Above Entitled Court:

Comes now Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust (hereinafter sometimes referred to as "petitioner"), and for his first and final report and his petition for allowance of a fee to himself as Receiver for the period commencing December 1, 1953, to and including February 28, 1954, respectfully represents and shows as follows:

1. On November 30, 1953, by order of this Court duly signed, docketed and entered, petitioner was appointed Receiver of all the real and personal property constituting the former Richman Trust. Under the terms of said order petitioner was empowered and directed forthwith to take possession of all of the properties and assets which are, or were determined to be, a part of said former Richman Trust, including all books of account, records and files pertaining to said former Trust in the possession or under [116] the control of Frederick I. Richman or his agents. Said order also directed petitioner to give a bond in the sum of \$75,000, and on December 2, 1953, said bond was duly approved by this Court and filed herein.

2. On December 2, 1953, petitioner duly peti-

tioned this Court for authority to employ legal counsel to advise him concerning his powers and duties as Receiver, to assist him in connection with all legal matters necessary for the protection, preservation or management of the assets of the former Richman Trust, to assist him in connection with the preparation of petitions or reports to this Court, and to act generally in any and all legal matters that might arise in the course of his administration of said assets. On December 2, 1953, by order duly signed and filed, this Court authorized and directed petitioner to employ Messrs. FitzPatrick & Whyte and John Whyte of Los Angeles, California, as legal counsel on a general retainer and as an expense of administration herein, to represent him in the matters specified in the above mentioned petition, and petitioner did promptly employ said counsel.

3. On or about December 2, 1953, petitioner commenced to take possession of the properties and assets constituting the former Richman Trust. Among the first properties over which he assumed possession and control were the five apartment houses which constitute the principal assets belonging to said former Trust, to wit:

Canterbury Apartment Hotel, 1746 North Cherokee, Hollywood 28, California;

Fountain Manor Apartment Hotel, 5165 Fountain Avenue, Los Angeles 26, California;

Oliver Cromwell Apartment Hotel, 418 South Normandie, Los Angeles 5, California;

Western Arms Apartment Hotel, 1057 South Western Ave., Los Angeles 6, California;

La Loma Apartment Hotel, 251 South Olive, Los Angeles 13, California.

By on or about December 18, 1953, petitioner had taken possession of all or [117] substantially all of the real and personal property constituting the former Richman Trust, including the books of account, records, documents, cancelled checks, bank statements, correspondence and files pertaining to said former Trust. Attached hereto as Schedule A and made a part hereof is a list of all the known assets and properties which, according to petitioner's best information and belief, constituted a part of the former Richman Trust and over which petitioner assumed possession, custody and/or control.

4. On February 26, 1954, by order of this Court duly signed and filed, petitioner was relieved of his active duties of management, control, and possession of the assets of the former Richman Trust as of the hour of 5:00 o'clock p.m. on February 28, 1954, and he and his agents and employees were directed to give over possession and control to plaintiff Lyda Tidwell of all said assets, excepting only money in bank and under petitioner's control. Pursuant to the terms of said order petitioner has duly surrendered possession and control to plaintiff Lyda Tidwell of all said assets, except for said money in bank which is still under his control.

5. Petitioner's operations with reference to the assets and properties of the former Richman Trust, and the services which have been necessarily rendered and performed by him or his agents in carrying on the normal business and affairs of said for-

mer Trust and matters incidental thereto, from and after December 1, 1953, to and including February 28, 1954, may be summarized as follows:

December 1953

Arranged for the bank account of the former Richman Trust at the Union Bank & Trust Co. of Los Angeles to be transferred to an account in the name of Roy E. Hallberg, as Receiver of the Assets of the Former Richman Trust.

Hired Roy Harrison, a practical accountant formerly employed by Frederick I. Richman, as a full time bookkeeper at a salary of \$475 per month. Harrison was employed because of his familiarity with the assets and properties of the former Richman Trust, the routine operations incident to their management, and the method of accounting used in [118] connection therewith.

Petitioner and his agents began collecting rents from the five apartment houses owned by said former Trust and deposited the same in the above mentioned bank account. This duty has been continuously and regularly performed over the period of time above mentioned. In this connection petitioner or his agents visited each apartment building at least three times a week and if any rents were on hand they were picked up in order that no substantial amount might be allowed to remain at the building. Furthermore, on the occasion of each such visit vacancies were checked in the particular apartment building.

Delivered supplies from one apartment house to another or from a supplier to an apartment house

throughout December 1953, and January and February 1954.

Renewed a blanket policy of compensation insurance on all five apartment houses.

Paid first installment of 1954 County taxes.

Arranged for transfer of the current files of the former Richman Trust to a low-rent bachelor apartment at the Oliver Cromwell where petitioner set up offices for administration of the receivership.

Inspected the various apartment houses and the vacant apartments therein, paying particular attention to the condition of the physical plant, including the boilers, refrigeration system, water heaters, basements, etc.

Supervised the refurbishing of draperies, arranged for painting and carpeting of one apartment, ordered linens, checked for fire damage, and ordered curtains, all at the Fountain Manor; ordered belts for the refrigerator system, arranged for repainting in several apartments, patched the carpet in one apartment, cleaned chairs, and ordered linens, all at the Western Arms; and arranged for a Christmas tree to be placed in the lobby of each of the five apartment houses.

Through his counsel, the Receiver petitioned this Court for authority to pay Christmas bonuses to employees at all five apartment [119] houses, which said authority was granted by order of this Court, after which bonus checks were prepared and distributed.

Began negotiations with Liberty Mutual Insurance Company and with Robert H. Dulley Co. for

rates on renewal of fire insurance policies soon expiring on the Oliver Cromwell and the La Loma. Subsequently ordered a three year fire insurance policy for the Oliver Cromwell from Liberty Mutual because of a discount of 10% on the standard rate plus a 20-25% dividend at the expiration of the policy.

Inspected poor tile conditions in various individual apartments at the Western Arms and called for bids to correct the worst of said conditions.

Established a bank account at the Third and Western Branch of the Citizens National Trust & Savings Bank of Los Angeles, this being a more convenient place for deposit of rents.

Made plans for revision of the accounting system for the year 1954 in order that full information regarding the operation of each apartment house would be available.

Reviewed contracts with Air Pollution Control, Inc. made by Richman together with other records re installation of smog control devices in the incinerators at the Oliver Cromwell and the Canterbury.

January 1954

Supervised repainting of the La Loma lobby.

Through his counsel, the Receiver petitioned this Court for authority to renovate individual apartments in the five apartment houses, which said authority was granted by court order.

Accompanied the appraisers designated by attorneys for Mrs. Tidwell on their tour of inspection of four apartment houses.

Obtained bids on painting of individual apartments.

Examined vacant apartments at Fountain Manor with particular attention to conditions needing repair and rehabilitation.

Appeared and testified in court re petition for authority to renovate individual apartments. [120]

Conferred with upholsterer.

Selected linens and purchased stove at Barker Bros.

Distributed payroll checks.

Obtained bids for painting at Fountain Manor and La Loma.

Purchased lamps for Oliver Cromwell and purchased draperies for Western Arms, Oliver Cromwell, and Fountain Manor.

Supervised painting of two apartments at Western Arms and two apartments at Fountain Manor.

Conferred with Camusi re method of capitalizing expenses.

Inspected and reinspected painting at Western Arms.

Inspected ceilings at La Loma.

Surveyed area surrounding Western Arms to determine comparative rents.

Conferred with Whyte (Receiver's attorney) re Receiver's report to this Court.

Purchased plastic tablecloths for La Loma.

Obtained bids for power lines at Oliver Cromwell.

Conferred with plumber re water lines at Fountain Manor.

Visited Air Pollution Control District's office and

conferred with Mr. Tow re criminal citation issued because of smoke coming from incinerator at Oliver Cromwell.

Inspected parapet at Canterbury and discussed with contractor problem of removing part of said parapet as required by City of Los Angeles ordinance.

February 1954

Conferred with Air Pollution Control, Inc. re installation of smog control equipment in incinerator at Oliver Cromwell.

Numerous telephone calls to Mr. Tow at Air Pollution Control District re above mentioned criminal citation.

Conferred with Mr. Peckham at Building Department of City of Los Angeles re removal of part of the parapet at the Canterbury; also conferred with contractor re same matter. [121]

Purchased ceiling fixtures at Sears Roebuck.

Conferred with employees of Director of Internal Revenue re tax status of former Richman Trust and assisted bookkeeper in preparation of tax return.

Selected upholstery materials for Western Arms and selected carpeting at Barker Bros.

Arranged for painting at La Loma and inspected the same.

Conferred with Gordon Larson, Director of Smog Control, re dismissal of above mentioned criminal citation.

Conferred with Mr. Tow of the Air Pollution Control District and a Deputy City Attorney re dis-

missal of complaint charging violation of California Health and Safety Code sections by reason of smoke issuing from incinerator at Oliver Cromwell—complaint dismissed.

Talked with Air Pollution Control, Inc. about prompt installation of smog control incinerator equipment at Canterbury.

Supervised painting at Fountain Manor.

Ordered linens and purchased bath rugs for La Loma.

Terminated employment of Harrison, the bookkeeper, and helped him balance his books.

Hired new bookkeeper, Mrs. Jean Findeisen, at a salary of \$300.00 a month and assisted her in learning bookkeeping routine.

Investigated and prepared claim for workmen's compensation insurance for manager of Oliver Cromwell and claim for public liability insurance for guest at Oliver Cromwell.

Inspected apartments at Oliver Cromwell for rain damage following severe storm.

Conferred with contractor re parapet removal at Canterbury and need for caulking at Oliver Cromwell following heavy rain.

Supervised major repair of refrigerator equipment at Western Arms, conferred with various refrigeration maintenance men, and selected new concern to give refrigeration service.

Purchased draperies for Fountain Manor and helped hang them. [122]

Purchased awning and lamps and ordered linens for Fountain Manor.

Conferred with plumber re repairing water lines at Fountain Manor.

Prepared and filed fiduciary income tax return.

6. Attached hereto as Schedule B and made a part hereof is a schedule of the receipts and disbursements of the Receiver for the period commencing December 1, 1953, to and including February 28, 1954. Attached hereto as Schedule C and made a part hereof is a schedule of the disbursements made by the Receiver as directed by the Court covering liabilities incurred prior to February 28, 1954, but not paid until after that date. Also attached hereto as Schedule D and made a part hereof is a list of all the known creditors of the former Richman Trust, with names, addresses, and amounts of claims, including both specific and contingent claims, as of the close of business on March 10, 1954.

7. Petitioner desires to make the following further representations to this Court concerning his operation of the assets and properties of the former Richman Trust:

During the three months in which petitioner has managed the five apartment buildings constituting the major portion of the assets of the former Richman Trust, his first consideration has been to keep the occupancy factor high. This has been accomplished to a satisfactory degree. Renovations and improvements have been made in individual apartments only as such apartments became vacant and when, in the opinion of petitioner, it became necessary to perform such work. This limited program of renovation has been performed consistently with

the representations made in the Receiver's petition to renovate individual apartments approved by order of this Court on January 15, 1954. Furthermore, only limited renovation was possible because of the fact that the cash position in the receivership has never been too strong.

The cash balance as of December 1, 1953, that being the time petitioner assumed his duties as Receiver, was \$5,990.30. As of that [123] date a premium of \$3,827.66 on a liability insurance policy was due; there were accrued bills from November, 1953, amounting to \$6,943.91; and there were taxes of \$17,860.97 to pay on December 10, 1953. This somewhat tight cash position has continued principally on account of the following substantial contingent liabilities, to wit: Contracts with Air Pollution Control, Inc., for installation of smog control equipment in the incinerators at the Canterbury and the Oliver Cromwell in the sum of \$2,658.80; a potential expenditure of \$3400 for removal of a portion of the parapet at the Canterbury to conform with a new ordinance of the City of Los Angeles; new fire insurance policies on the Oliver Cromwell and the La Loma amounting to \$1,835.46 and \$558.38, respectively; and a second installment of real estate taxes due April 10, 1954, in the sum of \$14,858.31. Accordingly, it has been necessary for petitioner to proceed cautiously with any program of renovation. In this connection, whereas approximately 11% of all the apartments at the Fountain Manor have been painted during petitioner's regime as Receiver, this percentage has been scaled down

materially in the other apartment buildings and at the Canterbury there has been no painting during the period of the receivership.

Because a great deal of the petitioner's time was involved in analyzing and appraising the condition of the five apartment houses, he feels that some of their salient factors as he has observed them should be set out in this report as follows:

Canterbury: The physical condition of this apartment building and its furnishings is the best of the five apartment houses. Largely because of the personal following and the activity of the manager, Mrs. Gregg, there have been relatively few vacancies. The demand for apartments generally is expected to drop off a bit by April 1954, at which time petitioner had planned to paint approximately six individual apartments in this house.

Air Pollution Control, Inc. has just completed installation of an Oxy-Aire unit in the Canterbury incinerator, which is awaiting approval of the Air Pollution Control District. [124]

During the Spring of 1953, after Mr. Richman had signed a contract for parapet correction to safeguard against potential earthquake damage, the Los Angeles City Council amended the parapet section of the Los Angeles City Building Code. The Department of Building and Safety then stated that its standard Sketch A should be used. This necessitated a revised bid which amounted to \$4420. Petitioner's agent went to the City Hall and talked with Mr. Peckham in the Department of Building and Safety who agreed to inspect the building again to

determine if the parapet above the entrance court might be allowed to remain. Following the inspection the bid price was reduced as of February 4, 1954, to \$3418. Petitioner has not yet signed a contract for parapet removal because it seems desirable to postpone this work until after the peak of the winter season has passed.

Fountain Manor: This building has the weakest physical plant of the five apartment houses. Moreover, it is located in a fringe area. The unit heaters in all of its apartments are non-vented, a source of potential trouble should restrictive legislation be enacted. A large majority of the apartments need painting, carpeting and other refurbishing. Even under petitioner's necessarily limited program of upgrading, he has deemed it essential to paint over 11% of these apartments and within two days after he was relieved of his active duties of management on February 28, 1954, several apartments were vacated which need renovating.

The plumbing situation is particularly bad. Electrolysis is taking place between some of the copper joints and the cast iron pipes. The copper joints have been used in making some emergency repairs and leaks are continually occurring at the joints and in the remaining cast iron pipe which is corroding. Due to the fact that the return hot water pipes are located in the confined area between a false fourth floor ceiling and the roof, it is practically impossible for workmen to take the necessary corrective steps and there is continual danger of breaking through plaster into the room below. Peti-

tioner's rough estimate of the cost of necessary work to correct that portion of the plumbing system which is presently giving trouble is \$3500. [125]

La Loma: Physically this building is badly run down. Although the rental rates are low, the Bunker Hill area is developing many vacancies. It has been necessary for petitioner to do some painting in various individual apartments but much more is called for. It has also been necessary to paint the lobby. Obviously, the relatively low rental rates do not allow for extensive renovation.

Oliver Cromwell: It is interesting to note that although four of the five apartment houses belonging to the former Richman Trust have rental rates which are from 4% to 15% above those of neighboring apartment buildings, the Oliver Cromwell, whose rates on an average are lower than those of nearby apartment buildings, has the best location of the five apartment houses in the former Trust. Accordingly, it seems to petitioner that after some renovation the rates at this apartment building should be increased. Had the receivership continued, it was petitioner's intention to upgrade various individual apartments if and when vacancies occurred. However, lamps and draperies have been purchased for this building. Some of the furnishings thus replaced were taken to the other buildings.

Air Pollution Control, Inc. has just completed installation of an Oxy-Aire unit in the incinerator which has yet to be approved by the Air Pollution Control District.

Petitioner is of the opinion that the concrete at

the rear of this building has never had water-proofing and the caulking around the windows has badly deteriorated. This should be done as well as a complete paint job on the trim of the building. The caulking around the window frames is dried up, cracked, and broken out. Glass in many of the windows is loose and needs reputtying. During the recent heavy rain storm water entered around the window frames and spoiled some relatively well-painted surfaces. Damage was particularly noticeable on the east side of the building and upon survey it became apparent to petitioner that some corrective work was urgent. Several bids were obtained amounting on an average of about \$650 covering painting [126] and caulking and trim on the east side of the building only. Of course, the whole building needs this treatment.

When the fire insurance policy on the Oliver Cromwell expired January 1, 1954, petitioner placed the new policy with Liberty Mutual at an original cost of 10% under standard rates. Furthermore, Liberty Mutual has paid a dividend of at least 25% on its fire policies since 1908. Fire insurance policies on the other apartment houses were not cancelled despite this potential saving because such cancellation would have involved short term rates for the period in force or a loss for the property owner.

Western Arms: This building is definitely located in a fringe area because of the large colored population in the neighborhood. It has been necessary to paint approximately 11% of the apartments.

Much more painting and refurbishing ought to be done. What lamps were needed were brought from the Oliver Cromwell. Petitioner has been reluctant to spend large sums in this building in view of the questionable desirability of retaining it as a part of the assets of the former Richman Trust. Even in the event that there should be extensive renovation in this building, it is the opinion of petitioner that largely because of its location the income derived therefrom would be particularly vulnerable should there be an economic down-trend.

8. With respect to the amount of the fee which should be allowed to petitioner for his services as Receiver herein, petitioner prefers to leave this matter to the judgment and discretion of this Court. In this connection petitioner is informed and believes and therefore alleges that the customary and usual fee for property management in the Los Angeles area is 5% of gross income.* Petitioner further alleges [127] that defendant Frederick I. Richman, who administered the assets and properties of the former Richman Trust prior to December 1, 1953, received approximately 10% of the Trust's gross income as his management fee, plus attorney's

*5% of the gross income figure of \$94,153.59 shown on Schedule B attached hereto is not equivalent to 5% of gross income during the entire three months period of the active receivership, namely, December 1953, and January and February 1954, for the reason that a representative of plaintiff Tidwell collected cash receipts from some or all of the five apartment houses for February 26, 27 and 28, 1954, amounting to approximately \$2,000.

fees for special work performed by him as an attorney. Petitioner also respectfully calls the Court's attention to the fact that his duties as Receiver herein were relatively more burdensome than they would have been had the receivership continued for a longer period of time on a normal well-oiled day-to-day basis in that heavy duties were imposed upon him as a Receiver by reason of his taking possession of unknown assets and familiarizing himself with them, the setting up of his books, the installing of his system of management, and then, only three months later, the necessity for closing up the books and surrendering possession of the assets. It also should be pointed out that when the Receiver took office, he was faced with the task of modernizing and renovating numerous individual apartments which had fallen into a state of obsolescence and disrepair under said Richman's administration.

Petitioner is further informed and believes and therefore alleges that said Frederick I. Richman had a contract to manage the assets of the former Richman Trust for so long as both of the beneficiaries thereof, viz., himself and his sister, Mrs. Tidwell, might live; whereas not only has petitioner's tenure as Receiver herein been in fact limited to a brief three months' period, but it was obvious at the time that the Receiver was appointed that his term of office would be relatively short. For the reasons mentioned above it seems to the Receiver that the compensation to be awarded him and his attorneys should be in excess of that which this Court would allow a receiver and his attorneys

for a three months' period of service in the case of a normal long-term receivership.

9. Petitioner further represents to this Court that his counsel, Messrs. FitzPatrick & Whyte and John Whyte, have rendered necessary and valuable services to him in connection with his administration of the affairs of the former Richman Trust and matters incidental thereto for which they should be adequately compensated, the nature and extent of said services being more particularly set forth in the petition for allowance of fees to attorneys for Receiver, filed concurrently herewith.

Wherefore, Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, prays:

1. That his first and final report to this Court as hereinabove set forth, including the schedules attached hereto and made a part hereof, be approved;

2. That this Court make and enter its order fixing and allowing a reasonable fee to the Receiver herein for the services heretofore necessarily rendered and performed by him in carrying on the normal business and affairs of the former Richman Trust and matters incidental thereto from and after December 1, 1953, to and including February 28, 1954, and that said order authorize and direct immediate payment of said sum so fixed by said Court to the Receiver from funds on deposit in the Third and Western Branch of the Citizens National Trust and Savings Bank of Los Angeles to the account

of Roy E. Hallberg, as Receiver of the Assets of the former Richman Trust;

3. That after payment to the Receiver of such reasonable fee as may be fixed by this Court and after payment to the attorneys for the Receiver of a reasonable attorneys' fee to be fixed by this Court, this Court make and enter an appropriate order relieving the Receiver of all further control over and responsibility for all moneys in bank belonging to the former Richman Trust and relieving and exonerating the Receiver from all responsibilities in any way connected with or arising out of the administration of the assets of the former Richman Trust;

4. For such other, further or different relief as may be just and proper.

Dated: March 18, 1954.

/s/ ROY E. HALLBERG,

Receiver

[129]

SCHEDULE A

Inventory of all known assets and properties constituting a part of the former Richman Trust over which the Receiver assumed possession, custody, and/or control.

1. The Canterbury Apartment Hotel, at 1740 North Cherokee Avenue, Hollywood. Including Grant Deed recorded in Book 28420, Page 223. Bill of Sale from Frank Bursinger. Title Insurance & Trust Policy 2924463. Combination of office safe. Niagara Fire Insurance Policy No. 55024, which

Schedule A—(Continued)

also covers the Fountain Manor Apartments and the Fountain Manor Garage.

2. The Fountain Manor Apartments, at 5165 Fountain Avenue, Los Angeles. Including Grant Deed recorded in Book 20614, Page 28. Title Insurance Policy No. 1736449. Survey of Apartment and Garage Buildings. Unrecorded Release of Chattel Mortgage, dated January 10, 1947, by John Hancock Life Insurance Company. Also cancellation of Assignment of Rents. Unrecorded bill of Sale covering furniture. Lease covering garage, together with Assignment of Lease of Richman Trust to Zane Green to Herschel E. Watson.

3. La Loma Apartments, at 251 South Olive, Los Angeles. Including Grant Deed recorded in Book 30131, page 213, Bill of Sale. Title Insurance Policy No. 3028784. Grant of Telephone Right-of-Way. Combination of safe. Liberty Mutual Fire Insurance Policy FC-64B 107480.

4. Oliver Cromwell Apartments, at 418 South Normandie, Los Angeles. Including Title Insurance Policy No. 3292694. Deed recorded in Book 34193, Page 133. Letter from Pacific Mortgage Corporation, dated September 6, 1950. Bill of Sale. Letter from Mutual Benefit Life Insurance Co., dated October 10, 1950. Combination of safe. Certificate of Insurance, Lloyd's No. 42787—Earthquake Policy. Certificate of Insurance, Liberty Mutual, No. FG 64 107389—Fire and Extended Coverage.

5. Western Arms Apartment Hotel, at 1057 South Western, Los Angeles. Including Title Guar-

Schedule A—(Continued)

antee Policy No. 1251512-A. Grant Deeds recorded in Book 18405, Page 150; 18405, Page 151; 18405, Page 146. Bill of Sale. Unrecorded Release of Chattel Mortgage. Second Bill of Sale.

6. Chowchilla Acres, containing Madera Abstract Co. Abstract No. 2666. Security Title Insurance Policy No. 20568. Deeds recorded Dec. 31, 1936, January 21, 1948, October 5, 1949, and March 2, 1951. [130]

7. Colorado Land Oil Royalty, containing unrecorded quitclaim Deed executed November 24, 1938.

8. Kern County Acres. Including Deeds recorded May 7, 1935; February 13, 1937. Telephone Right-of-Way Grant. Letter and Plat from County Surveyor, dated December 27, 1944.

9. San Bernadino Acres. Including Deeds recorded in Book 267, Page 377, and in Book 1187, Page 243, San Bernadino County. Consolidated Title Insurance Policy 82994. Survey.

10. W. T. Brookshire, Loan, containing Trust Deed and Chattel Mortgage dated December 9, 1946, recorded December 21, 1946 in Book 1996, Page 215, Official Records of San Bernadino County, together with note for \$5,000.00. Pioneer Title Insurance Policy 174745. Certificate for one (1) share Crestline Village Mutual Service Company No. 1572CV. Phoenix Assurance Co. Policy No. 837158 for \$9,500.00, expiring July 30, 1956. Four (4) Assignments of Deed of Trust.

11. Kenneth Finch, Promissory Note dated August 4, 1947 for \$800.00, plus miscellaneous papers.

Schedule A—(Continued)

12. Associated Gas & Electric Co. containing five (5) certificates for fifteen (15) shares Class "A" stock in the name of F. H. Richman, all endorsed with signature guaranteed, all dated in 1930 and 1931.

13. Nevada State Gold Mines Certificate 739 for 382 shares Second Preferred. Certificate 2361 for 1,047 $\frac{1}{5}$ shares Common stock, and correspondence.

14. Southwest Oil and Development — Correspondence.

15. Insurance Policies: Associated Indemnity Corporation—Standard Workmen's Compensation and Employers' Liability Policy No. C 48-0912, and American Indemnity Company's Comprehensive Liability Policy No. CL 13828.

And—All books of account, records, documents, cancelled checks, bank statements, correspondence, and files pertaining to the former Richman Trust as more particularly hereinafter set forth:

1. Information Returns.
2. Richman Trust Payroll.
3. Fire Insurance.
4. Withholding Returns.
5. Nagel-Richman Compensation Insurance.
6. Unemployment Correspondence.
7. Social Security.
8. Unemployment Returns.
9. Unemployment Statement of Charges.
10. Nagel-Richman Public Liability Insurance.
11. Canterbury—Dry Cleaning.
12. Canterbury—Incinerator.

Schedule A—(Continued)

13. Canterbury—Monthly Reports.
14. Canterbury—Laundry.
15. Canterbury—Milk.
16. Canterbury—Telephone.
17. Canterbury—Paid Bill File—January 1, 1953
to December 31, 1953.
18. Canterbury—Paid Bill File—January 1, 1954
to
19. Canterbury—Rent Receipts.
20. Canterbury—General.
21. Colorado Oil Royalty.
22. Fountain Manor—Telephone.
23. Fountain Manor—Laundry.
24. Fountain Manor—Paid Bill File—August 1,
1953 to December 31, 1953.
25. Fountain Manor—Paid Bill File—January 1,
1954 to
26. Fountain Manor—Transient Correspondence.
27. Fountain Manor—General.
28. Fountain Manor—Rent Receipts.
29. Fountain Manor—Monthly Reports.
30. La Loma—Rent Receipts.
31. La Loma—Paid Bill File—July 1, 1953 to
December 31, 1953.
32. La Loma—Paid Bill File—January 1, 1954 to
33. La Loma—Monthly Reports.
34. La Loma—Laundry.
35. Madera & Kern County Oil Rights.
36. Oliver Cromwell—Incinerator.
37. Oliver Cromwell—Dry Cleaning. [132]
38. Oliver Cromwell—Telephone.

Schedule A—(Continued)

39. Oliver Cromwell—General.
 40. Oliver Cromwell—Paid Bill File—July 1, 1953 to Dec. 31, 1953.
 41. Oliver Cromwell—Paid Bill File—January 1, 1954 to
 42. Oliver Cromwell—Rent Receipts.
 43. Oliver Cromwell—Monthly Reports.
 44. Oliver Cromwell—Laundry.
 45. Nagel-Richman—San Bernadino Acres (also includes Orange County Lots and San Clemente Lot.)
 46. Western Arms—Rent Receipts.
 47. Western Arms—Smog.
 48. Western Arms—General.
 49. Western Arms—Monthly Reports.
 50. Western Arms—Laundry.
 51. Western Arms—Paid Bill File—January 1, 1953 to December 31, 1953.
 52. Western Arms—Paid Bill File—January 1, 1954 to
 53. Richman Trust Workpapers—Jan. 31, 1950 to Nov. 30, 1953.
 54. Richman Trust Tax Returns for Years 1946-1953.
- General Ledger Book to December 31, 1953.
- Current Ledger Book.
- Cash Receipts and Disbursements Book to Dec. 31, 1953.
- Journal.

Schedule A—(Continued)

Cash Receipts and Disbursements Book from
January 1, 1954 to

Payroll Record Book.

1953 Payroll Terminations Book.

And the following records of properties of the
Old Richman Trust and properties formerly be-
longing to Nagel-Richman:

1. Carton No. 1: containing the following
tabbed filed:

Old Richman Trust—General.

Old Richman Trust—Burbank Corner.

Old Richman Trust—Linden Court.

Old Richman Trust—Ponce de Leon Apart-
ments. [133]

Old Richman Trust—Surflin.

Old Richman Trust—Tremaine Property.

Nagel-Richman—Insurance.

Nagel-Richman—Plate Glass Insurance.

Rent Control Law.

Correspondence re Rent Control.

Rent Control Petitions.

Rent Control.

Nagel-Richman—Atlantic and Compton
Acres and Lewis Lot.

Nagel-Richman—Beanhouse and Bean & Do-
gleville.

Nagel-Richman—Bellhurst Park. Bescondy
and La Canada.

Burbank Corner.

Burbank Ervin.

Richman Trust—Burbank Ervin.

Richman Trust—Burbank Motor Parts.

Schedule A—(Continued)

Nagel-Richman—Burbank San Jose.

Casa Loma Court.

Casa Loma Rent Statements.

Casa Loma Court—Paid Bills 3/31/43.

Casa Loma Court—Paid Bills April 1, 1943.

Nagel-Richman—Chowchilla Acres.

Coronet Apartments.

Coronet Telephone & Telegraph Bills.

Coronet Laundry Bills.

Coronet Paid Bills — March, 1943 to January, 1944.

Nagel-Richman Culver City Lots.

2. Carton No. 2: containing the following tabbed files:

Nagel-Richman El Cajon Ranch.

Fletcher Apartments—Legal.

Fletcher Apartments.

Fletcher Apartments.

Fletcher Apartments.

Fletcher Apartments—Rent Statements.

Five (5) Fletcher Apartments Paid Bill
Files from November, 1941 to October,
1950.

Nagel-Richman—Imperial Acres.

Nagel-Richman—Inglewood Building.

Nagel-Richman—Jackson Farm.

Jackson Farm.

Nagel-Richman—Jones Farm.

Jones Farm.

Nagel-Richman—Kern County Acres.

Los Angeles Housing Problem.

Schedule A—(Continued)

R-T Melrose Building.

Modern Machine Works.

3. Carton No. 3: containing the following tabbed files:

Ojai Apartments—Three (3) Paid Bill Files
from September, 1941 to May, 1944.

Ojai Apartments.

Nagel-Richman—Olympic Boulevard Lot.

Nagel-Richman—Paden and Pierson Lots.

Nagel-Richman—Portland Acres.

Nagel-Richman—Powers Place.

Nagel-Richman—Sixty Acres.

Nagel-Richman—Spokane Lots.

R-T—Stolper Electric Financial Statements.

Nagel-Richman—Long Beach Triangle.

Strand Lot.

Villa Carlotta—OPA.

Villa-Carlotta—Laundry bills.

Villa Carlotta—Telephone Bills.

Villa Carlotta—Monthly Reports.

Nagel-Richman—Villa Carlotta.

Villa Carlotta—Four (4) Paid Bill Files
from Nov. 1944 to Mar., 1948.

4. Carton No. 4: containing the following tabbed files:

Western Arms Apartments.

Western Arms—Laundry bills. [135]

Woods vs. Richman.

Western Arms—Rent statements.

Western Arms Paid Bills Files from May,
1941 to Dec. 31, 1952.

Schedule A—(Continued)

5. Carton No. 5 — containing the following tabbed files:
 Fountain Manor—OPA.
 Fountain Manor.
 Fountain Manor.
 Stanley vs. Richman.
 Fountain Manor—Laundry Bills.
 Fountain Manor—Telephone.
 Fountain Manor Apartment Hotel—General.
6. Carton No. 6 — containing the following tabbed files:
 Fountain Manor Paid Bill Files from January, 1944 to July, 1953.
7. Carton No. 7 — containing the following tabbed files:
 Canterbury Apartment Hotel Paid Bills
 Files from October, 1948 to December 31, 1952.
8. Carton No. 8 — containing the following tabbed files:
 Oliver Cromwell Paid Bills Files from August, 1950 to June 30, 1953.
 La Loma Paid Bill Files from May, 1949 to June 30, 1953.
9. Carton No. 9—containing the following:
 Check Stubs from January 1, 1946 to September 30, 1953.
10. Carton No. 10—containing the following:
 Richman Trust Cancelled Checks and Bank Statements from January, 1946 to December, 1950.

Schedule A—(Continued)

11. Carton No. 11—containing the following:
Richman Trust Cancelled Checks—January, 1951 to October, 1953, including Bank Statements.
12. Transfer Ledger containing Cash Receipts and Disbursements from January, 1941 to December, 1952.
13. Transfer Ledger containing old General Ledger Account sheets. [136]
14. Two Stationery Boxes containing Individual Wage Earner Records, and post-office returned W-2 Forms.
15. Two Stationery Boxes containing Time Sheets for calendar year 1952 and for January, 1953, through December, 1953.
16. Oliver Cromwell Payment Book, and Pacific Mortgage Company Statements for 1951 and 1952. [137]



SCHEDULE OF RECEIPTS AND DISBURSEMENTS
OF ROY E. HALLBERG, AS RECEIVER OF THE
ASSETS OF THE FORMER RICHMAN TRUST

FROM DECEMBER 1, 1953 TO AND INCLUDING FEBRUARY 28, 1954

	Canterbury	Fountain	La	Oliver	Western	Other	Total	Petty Cash	Imprest
	Manor	Loma	Cronwell	Arms					Bank
Cash in Bank									
as of 11/30/53									\$ 5,990.30
Imprest Petty									
Cash Funds on									
Hand at Apts.									
as of 11/30/53	\$375.00	\$200.00	\$10.00	\$100.00	\$100.00			\$785.00	
Total Cash on									
Hand end in									
Bank as of									
Nov. 30, 1953							\$ 6,775.30		
Rent & Misc. Receipts									
for the month of									
December, 1953	\$9,269.97	\$7,153.13	\$2,710.50	\$7,656.28	\$4,975.75	\$ 58.33	\$31,823.96		\$31,823.96

THE
LIBRARY
OF THE
MUSEUM
OF
COMPARATIVE ZOOLOGY
AT
HARVARD UNIVERSITY
CAMBRIDGE, MASS.

Canterbury

Ia

Oliver

Western

Imprest

139

Manor

Loma

Cromwell

Arms

Other

Total

Petty Cash

Bank

Rent & Misc.

Receipts for

the month of

January, 1954

(\$63.44)

\$9,457.73 \$8,021.02 \$2,677.95 \$7,728.29 \$4,931.00 \$61.11 \$32,813.66 \$32,813.66

Rents & Misc.

Receipts for

the month of

February, 1954

8,307.31 6,454.42 2,642.25 7,604.70 4,185.94 321.35 29,515.97 29,515.97

Total Receipts

for period from

Dec. 1953 to

and including

Feb. 28, 1954

\$27,035.01 \$21,628.57 \$8,030.70 \$22,989.27 \$14,092.69 \$377.35 \$94,153.59 \$100,143.89

Receipts for the month of February include those only for twenty five days.

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Computation of Net Income
Net Worth Method

	<u>12/31/48</u>	<u>12/31/49</u>	<u>12/31/50</u>	<u>12/31/51</u>	<u>12/31/52</u>
<u>Assets</u>					
A. Cash on Hand - Schedule F	86.50	11206.36	-0-	7228.64	10349.09
B. Bank Accounts					
1. City Savings Bank a/c #155522	3509.32	3367.14			
2. National Hamilton Bank a/c #6594	3933.93	3973.42			
3. First National Bank of Nevada a/c #10927	85.56	86.83	88.12	88.78	3845.17
4. Security National Bank of Reno a/c #5192	7936.89	8041.51			
5. Home National Bank	226.20	202.40			
6. First National Bank of Nevada-Commercial a/c	155.09	329.95	771.75	10101.67	1105.01
7. Securities - Schedule A	1050.00	1250.00	114807.01	135628.16	165883.34
C. Ultra K Distributing Co.					20000.00
D. Office Equipment - Schedule E	7707.70	7851.95	7920.51	8159.76	8387.76
E. Automobile - Schedule C	2827.00	2827.00	2827.00	6531.00	6531.00
F. Airplane	9500.00	9500.00	9500.00	9500.00	9500.00
G. Airplane Radio				450.00	450.00
H. Residence	25000.00	25000.00	25000.00	25000.00	25000.00
I. Improvements on Residence			703.15	1395.87	1395.87
J. Home Furnishings	2624.29	2624.29	2827.91	2907.74	2907.74
K. U. S. Government Bonds	29400.00	31650.00	9787.50	2250.00	2250.00
	<u>94042.48</u>	<u>107910.85</u>	<u>174232.95</u>	<u>209241.62</u>	<u>257604.98</u>
<u>L. Total Assets</u>					
<u>Liabilities</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<u>Net Worth</u>	<u>94042.48</u>	<u>107910.85</u>	<u>174232.95</u>	<u>209241.62</u>	<u>257604.98</u>
 A. Less: Beginning Net Worth		<u>94042.48</u>	<u>107910.85</u>	<u>174232.95</u>	<u>209241.62</u>
B. Increase in Net Worth		<u>13868.37</u>	<u>66322.10</u>	<u>35008.67</u>	<u>48363.36</u>
C. Add: Expenditures Not Reflected in Net Worth					
1. Federal Income Taxes Paid		1553.00	300.00	2191.78	8808.40
2. Personal Living Expenses - Schedule D		<u>787.01</u>	<u>3980.93</u>	<u>1445.26</u>	<u>1836.31</u>
		<u>16208.38</u>	<u>70603.03</u>	<u>38645.71</u>	<u>59008.07</u>
D. Less: Non Cash Deductions and Non-Taxable Income					
1. Allowable Depreciation - Schedule E		2747.58	2762.29	3100.54	3146.14
2. Non Taxable Income					
A. 50% Long Term Capital Gains			349.40	1394.63	
B. Cost of Endowment Policies Cashed			877.48	878.82	
C. Capital Surplus Distribution- Technical Fund Stock					3335.46
D. Income Tax Refund			<u>357.62</u>		
		<u>2747.58</u>	<u>4346.79</u>	<u>5373.99</u>	<u>6481.60</u>
E. Adjusted Gross Income Corrected		<u>13460.80</u>	<u>66256.24</u>	<u>33271.72</u>	<u>52526.47</u>
F. Less: Personal Deductions		<u>386.00</u>			
G. Standard Deduction			<u>1000.00</u>	<u>1000.00</u>	<u>1000.00</u>
H. Net Income Corrected		<u>13074.80</u>	<u>65256.24</u>	<u>32271.72</u>	<u>53526.47</u>
I. Net Income Per Return		<u>4163.66</u>	<u>10125.20</u>	<u>23085.66</u>	<u>36562.68</u>
J. Income Understated		<u>8911.14</u>	<u>55131.04</u>	<u>9186.06</u>	<u>14963.79</u>

DISBURSEMENTS FOR EXPENSES AND OBLIGATIONS INCURRED BY F. I. RICHMAN PRIOR TO RECEIVERSHIP

	<u>Total</u>	<u>Centerbury</u>	<u>Fountain</u>	<u>La</u>	<u>Oliver</u>	<u>Western</u>
			<u>Manor</u>	<u>Loma</u>	<u>Cromwell</u>	<u>Arms</u>
<u>Operational Expenses</u>						
Water, Electric & Power	\$725.72	\$ 130.59	\$213.26	\$ 30.07	\$206.16	\$145.64
Gas	340.55	49.07	152.94	59.11	26.92	52.51
Fuel Oil	321.82	79.58		73.55	168.69	
Elevator Maintenance	72.03	12.50	5.00	20.42	16.95	17.16
Furnace-Oil Burner	289.35	29.85		250.00	9.50	
Refrig. Main. & Repair	63.44	5.00	8.00	36.48	8.96	5.00
Laundry	962.99	273.99	242.04	67.62	241.42	137.92
Curtain & Blank.Cleaners	53.97	35.27	9.63	9.07		
Telephone & Telegraph	572.70	256.28	185.11	8.94	113.54	8.83
Western Union	27.29	9.15	6.14		12.00	
Supplies	368.86	97.25	112.37	23.62	118.01	17.61
<u>General Expenses</u>						
Compensable Exp.for Guests	206.11	153.86			52.25	
Pest Control Service	26.00		7.50	4.50	7.50	6.50
Supplies	14.59	14.59				
Advertising	93.95		47.69			46.26
Stationery & Supplies	12.50		12.50			
Decorating, Repair & "replace."						
Carpeting	961.40	572.53	185.87			203.00

	<u>Total</u>	<u>Canterbury</u>	<u>Fountain</u>	<u>La</u>	<u>Oliver</u>	<u>Western</u>
			<u>Manor</u>	<u>Loma</u>	<u>Crownwell</u>	<u>Arms</u>
Cleaning (Furn. etc.)	\$ 72.78	\$ 18.00	\$ 39.78	\$ 3.00	\$ 12.00	
Electrical	9.42	3.78				\$ 5.64
Heating & Stoves	123.15	27.84	58.53		6.36	30.42
Linens & Bedding	377.58	26.39	335.08			16.11
Shades & Ven. Blinds	103.97	44.21	59.76			
Painting	550.16	135.85	149.25	30.67	234.39	
Plumbing	137.04	33.41	5.58		45.78	52.27
Furniture Repair	21.58			16.68	4.90	
Upholstering	461.78		135.30	78.94	134.79	112.72
	\$6,970.73	\$2,008.99	\$1,971.33	\$712.67	\$1,420.12	\$857.62
Less Discounts	26.82	5.30	3.80	.92	16.35	.42
TOTAL AS PER SCHEDULE B	\$6,943.91	\$2,003.69	\$1,967.53	\$711.75	\$1,403.77	\$857.17

Material	Weight	Value	Quantity	Unit	Price
Steel	100.00	100.00	1.00	lb	1.00
Aluminum	100.00	100.00	1.00	lb	1.00
Copper	100.00	100.00	1.00	lb	1.00
Brass	100.00	100.00	1.00	lb	1.00
Iron	100.00	100.00	1.00	lb	1.00
Lead	100.00	100.00	1.00	lb	1.00
Gold	100.00	100.00	1.00	lb	1.00
Silver	100.00	100.00	1.00	lb	1.00
Platinum	100.00	100.00	1.00	lb	1.00
Palladium	100.00	100.00	1.00	lb	1.00
Rhodium	100.00	100.00	1.00	lb	1.00
Rosin	100.00	100.00	1.00	lb	1.00
Shellac	100.00	100.00	1.00	lb	1.00
Resin	100.00	100.00	1.00	lb	1.00
Glue	100.00	100.00	1.00	lb	1.00
Paint	100.00	100.00	1.00	lb	1.00
Oil	100.00	100.00	1.00	lb	1.00
Grease	100.00	100.00	1.00	lb	1.00
Soap	100.00	100.00	1.00	lb	1.00
Wax	100.00	100.00	1.00	lb	1.00
Putty	100.00	100.00	1.00	lb	1.00
Sealer	100.00	100.00	1.00	lb	1.00
Primer	100.00	100.00	1.00	lb	1.00
Finish	100.00	100.00	1.00	lb	1.00
Stain	100.00	100.00	1.00	lb	1.00
Sealant	100.00	100.00	1.00	lb	1.00
Adhesive	100.00	100.00	1.00	lb	1.00
Concrete	100.00	100.00	1.00	lb	1.00
Brick	100.00	100.00	1.00	lb	1.00
Block	100.00	100.00	1.00	lb	1.00
Tile	100.00	100.00	1.00	lb	1.00
Stone	100.00	100.00	1.00	lb	1.00
Grout	100.00	100.00	1.00	lb	1.00
Mortar	100.00	100.00	1.00	lb	1.00
Plaster	100.00	100.00	1.00	lb	1.00
Stucco	100.00	100.00	1.00	lb	1.00
Insulation	100.00	100.00	1.00	lb	1.00
Roofing	100.00	100.00	1.00	lb	1.00
Shingles	100.00	100.00	1.00	lb	1.00
Siding	100.00	100.00	1.00	lb	1.00
Flooring	100.00	100.00	1.00	lb	1.00
Wallpaper	100.00	100.00	1.00	lb	1.00
Paint	100.00	100.00	1.00	lb	1.00
Sealer	100.00	100.00	1.00	lb	1.00
Primer	100.00	100.00	1.00	lb	1.00
Finish	100.00	100.00	1.00	lb	1.00
Stain	100.00	100.00	1.00	lb	1.00
Sealant	100.00	100.00	1.00	lb	1.00
Adhesive	100.00	100.00	1.00	lb	1.00
Concrete	100.00	100.00	1.00	lb	1.00
Brick	100.00	100.00	1.00	lb	1.00
Block	100.00	100.00	1.00	lb	1.00
Tile	100.00	100.00	1.00	lb	1.00
Stone	100.00	100.00	1.00	lb	1.00
Grout	100.00	100.00	1.00	lb	1.00
Mortar	100.00	100.00	1.00	lb	1.00
Plaster	100.00	100.00	1.00	lb	1.00
Stucco	100.00	100.00	1.00	lb	1.00
Insulation	100.00	100.00	1.00	lb	1.00
Roofing	100.00	100.00	1.00	lb	1.00
Shingles	100.00	100.00	1.00	lb	1.00
Siding	100.00	100.00	1.00	lb	1.00
Flooring	100.00	100.00	1.00	lb	1.00
Wallpaper	100.00	100.00	1.00	lb	1.00

DISBURSEMENTS FOR DECEMBER, 1953, EXPENSES OF OPERATION, MAINTENANCE, AND RENOVATION

Total	Canterbury	Fountain	Loma	Oliver	Western	Office	Other
		Menor	Loma	Cromwell	Arms		
<u>Operational Expenses</u>							
Water, Electric & P.	\$ 477.71	\$ 114.42	\$ 106.96	\$ 120.31	\$ 62.99	\$ 73.03	
Gas	253.61	32.71	46.72	6.57	107.67	59.94	
Fuel Oil	402.79	162.66	--	79.58	89.11	71.44	
Elevator Maintenance	121.60	18.55	36.29	6.00	32.03	28.73	
Furnace-Oil Burner	10.50				5.50	5.00	
Refrig. Main. & Repair	91.72	21.25	28.35	4.15	5.00	32.97	
Laundry-Curtail & Blan.	103.37	49.29	37.77	9.78	6.53		
Telephone & Telegraph	263.04	49.55	57.77	1.50	148.35	5.89	
Western Union	14.03	6.67	1.89		5.47		
Supplies	246.29	54.79	36.92		37.94	116.64	
Petty Cash Expend.	498.79	215.37	87.97	11.57	68.14	92.75	\$22.99
<u>General Expenses</u>							
Compensable Ex.-Guests	71.48	30.68			40.80		
Pest Control Service	26.00		7.50	4.50	7.50	6.50	
Gardener	65.00		45.00		20.00		
Other Supplies	24.06		24.06				
Salaries & Wages	6,212.51	1,640.25	1,554.36	320.00	1,610.28	637.62	450.00
Christmas Bonus	515.00	155.00	75.00	35.00	145.00	80.00	25.00

	<u>Total</u>	<u>Canterbury</u>	<u>Fountain</u>	<u>La</u>	<u>Oliver</u>	<u>Western</u>	<u>Office</u>	<u>Other</u>
		<u>Manor</u>	<u>Loma</u>	<u>Cromwell</u>	<u>Arms</u>			

Social Security	(\$100.97)							
S. U. I.	(64.06)							
Income Tax Withheld	(517.60)	(\$250.96)	(\$239.49)	(\$62.49)	(\$224.65)	(\$124.37)	(\$ 95.67)	
Employees' Rent	(315.00)							

Administrative Expense

Receiver's Bond	375.00						375.00	
Stationery	2.85						2.85	

Decorations, Repairs & Rep.

Carpeting	115.74						115.74	
Cleaning	38.98		38.98					
Electrical	177.21	155.97	2.50	9.75	6.49	2.50		
Heating & Stoves	52.12		30.07			22.05		
Shades & Ven. Blinds	68.88		50.79			18.09		
Painting	759.50		170.00	174.00	7.50	408.00		
Plumbing	215.42	73.84	16.87	18.29	97.87	18.55		
Furnishings	76.31		76.31					
Misc.	12.65					12.65		

Other-Refund to Guest

3.75

Mtge. Payment- Interest

638.16

Principal 1,389.09

\$638.16

1,389.09

Director of Internal

Revenue

Less Discounts

Real Estate Taxes

Paid 12/10/53

TOTAL DECEMBER, 1953,

DISBURSEMENTS AS PER

SCHEDULE B

Total	Canterbury	Manor	Loma	Oliver	Western	Arms	Office	Other
\$ 500.25								\$500.25
20.93	\$ 5.90	\$ 1.45						
\$12,804.85	\$2,524.14	\$2,291.14	\$738.51	\$2,274.64	\$1,668.75		\$780.17	\$2,527.50
17,894.41	4,814.06	4,156.79	1,411.00	4,627.93	2,851.19			33.44
\$30,699.26	\$7,338.20	\$6,447.93	\$2,149.51	\$6,902.57	\$4,519.94		\$780.17	\$2,560.94



Total	Canterbury	Fountain	La	Oliver	Western	Office	Other
		Manor	Loma	Gronwell	Arms		
Linens & Bedding	\$282.62	\$195.62	\$87.00				
Plumbing	450.00			\$450.00			
Furn.-mattress	224.71	48.85	61.00	72.95	\$17.85		
Upholstering	432.04	112.75			112.75		
<u>Other</u>							
3 Yr. Fire Insurance				1,835.46			
Licenses	11.00	10.00	1.00				\$3,427.66
Liability Ins. Prem.							400.00
Workmens Comp. Deposit							632.95
Mtge. Payment-Interest							1,394.30
Principal							120.37
Compensatory Expense-							
Div. of Internal Rev.							212.59
Federal Unemploy.							744.52
With. & F.O.A.B.							627.26
St. Dept. or Employ.							
	\$21,377.96	2,695.80	\$3,300.28	\$871.08	\$4,888.57	\$1,592.70	\$439.88
Less Discounts	2.33	.62	.61			1.10	
Total Jan. Disburse.							\$7,589.65
as per Schedule B	\$21,375.63	\$2,695.80	\$3,299.66	\$870.47	\$4,888.57	\$1,591.60	\$439.886
							\$7,589.65

*Office petty cash Office supplies.. 3.55 ; FM- \$46.62; Western A.-\$8.66

	Total	Canterbury	Mountain	La	Oliver	Western	Office	Other
			Manor	Loma	Cromwell	Arms		
<u>Operational Expenses</u>								
Water, Electric & P.	\$1,261.18	\$ 260.43	\$315.61	\$159.64	\$305.64	\$219.86		
Gas	646.98	89.39	207.45	63.47	152.02	134.65		
Laundry	1,200.35	335.78	306.14	87.87	293.82	176.74		
Tel. & Tel.	865.86	288.31	294.93	12.71	260.14	9.77		
Petty Cash	454.26	136.37	141.34	10.08	50.60	157.04	\$58.85*	
<u>General Expense</u>								
Gardener	65.00		45.00		20.00			
Salaries & Wages	5,754.87	1,564.50	1,352.05	320.00	1535.26	533.06	450.00	
Social Security	(115.16)							
S.U.I.	(57.65)							
Income T. Withheld	(379.45)	(209.58)	(206.68)	(53.62)	(200.10)	(104.78)	(84.50)	
Employees' rent	(307.00)							
Office Stationery							15.55	
Decorating, Repairs & Repl.								
Carpeting	9.00		9.00					
Painting	760.00		425.00	80.00		255.00		
Cleaning	--							
Electrical	11.33			11.33				
Heating & Stoves	116.96		30.68	30.60		55.68		
Draperies	150.40		12.54		112.78	25.08		



DISBURSEMENTS FOR FEBRUARY, 1954, EXPENSES OF OPERATION, MAINTENANCE, AND RENOVATION

	<u>Total</u>	<u>Canterbury</u>	<u>Manor</u>	<u>Loma</u>	<u>Cronwell</u>	<u>Arms</u>	<u>Office</u>	<u>Other</u>
<u>Operational Expenses</u>								
Water, Electric & Power	\$1,020.97	\$ 239.68	\$ 294.97		\$270.30	\$216.02		
Gas	265.51		204.42	\$ 61.09				
Fuel Oil	577.10	177.51		73.55	252.49	73.55		
Elevator Maintenance	71.59	30.79	5.00	11.85	17.95	6.00		
Refrigeration	101.54	5.00	61.56	4.00	5.00	25.98		
Laundry	1,156.43	329.46	305.29	88.44	266.31	166.93		
Curtain & Blank.Clean.	37.60	7.32	2.30	3.51	18.84	5.63		
Telephone & Telegraph	20.84		4.03	11.35		5.46		
Western Union	22.81	19.70	3.11					
Supplies	299.51	86.13	48.48		92.32	72.58		
Petty Cash Expenses	406.17	91.18	95.73	18.61	54.81	65.08	\$ 41.80	\$38.96
<u>General Expenses</u>								
Compensatory Expense-Guest	188.43	135.33			53.10			
Pest Control Service	26.00		7.50	4.50	7.50	6.50		
Gardener	65.00		45.00		20.00			
Supplies-other	41.23							
Licenses	189.50	52.00	45.50	16.50	46.00	29.50		
Advertising	33.72		33.72					
							34.41	6.82



	<u>Total</u>	<u>Canterbury</u>	<u>Fountain</u>	<u>La</u>	<u>Oliver</u>	<u>Western</u>	<u>Arms</u>	<u>Office</u>	<u>Other</u>
Salaries & Wages	\$6,108.74	\$1,621.50	\$1,454.71	\$320.00	\$1,479.40		\$633.13	\$600.00	
Social Security	(122.55)								
S. U. I.	(62.09)								
Income Tax Withheld	(397.40)	(210.72)	(223.66)	(53.42)	(190.53)	(107.71)		(111.00)	
Employees' Kent	(315.00)								
<u>Decorations, Repair & Rep.</u>									
Linen & Bedding	934.66		114.37	82.15	603.70		134.44		
Painting	375.65		298.50	21.00	56.15				
Curtains & Drapes	123.38	40.05	34.16		49.17				
Cleaning	20.00				10.00		10.00		
Plumbing	277.92	54.56	153.37	35.16	17.50		17.33		
Furnishings	66.93		49.08		17.85				
Upholstering	209.10				18.45		190.65		
Repairs	212.94	3.60	68.02	8.00	26.32		107.00		
<u>Other-- Bank Charge</u>	4.03							4.03	
Mtge. Payment-Interest	627.72								\$ 627.72
Principal 1,399.53									1,399.53
Director of Int. Rev.	482.37								482.37
Less Discounts	163.90	44.67	46.01	12.36	40.52	20.27			
TOTAL FEBRUARY, 1954,	\$14,305.98	\$2,638.42	\$3,059.15	\$693.93	\$3,152.04	\$1,637.80	\$569.24	\$2,555.40	
DISBURSEMENTS AS PER									

DISBURSEMENTS MADE BY THE RECEIVER AS DIRECTED BY THE COURT
COVERING LIABILITIES INCURRED PRIOR TO FEBRUARY 28, 1954,
BUT NOT PAID UNTIL AFTER THAT DATE.

<u>Name & Address</u>	<u>Total</u>	<u>CA</u>	<u>FM</u>	<u>LL</u>	<u>OC</u>	<u>WA</u>
Ace Specialty Co. 5285 W. Pico, L.A. 19	\$58.18		\$58.18			
Acme Forms 1517 Beverly Blvd., L.A. 26	2.59				\$2.59	
Arden Milk 103 So. Hamel Rd., L.A. 48	93.72	\$93.72				
Arrowhead & Puritas Waters 1566 E. Washington Blvd., L.A.	14.07	14.07				
Barker Bros. 7th & Figueroa	773.27	-	309.38	180.29	211.15	\$72.45
Calif. Refrigeration Co. 5905 Melrose Ave., L.A. 38	78.26	5.00	8.50	31.42	5.00	28.34
Cascade Laundry 4414 Santa Monica, L.A.	1,023.44	298.36	260.56	66.69	244.97	152.86
City Curtain & Blank. Cleaners 5155 So. Western Ave., L.A.	75.60	18.22	28.49	9.69	13.18	6.02
Coast Shade & Venetian Blind 4900 W. Santa Monica Blvd., LA	7.74		7.74			
Columbia Pest Control Co. 101 No. Virgil, L. A. 4	26.00	--	7.50	4.50	7.50	6.50
Crescent Refining & Oil Co. 2460 E. 28th, L.A. 58	316.83	89.11	--	70.72	78.50	78.50
Elevator Maintenance Co., Ltd. 1316 Glendale Blvd., L.A. 26	62.16	12.50	5.00	6.00	32.66	6.00



<u>Name & Address</u>	<u>Total</u>	<u>CA</u>	<u>FM</u>	<u>LI</u>	<u>OC</u>	<u>WA</u>
Carl Ericson, painter 1057 So. Western, L.A. 6	\$75.00		\$75.00			
Frazer Bros. Oil Burner 1044 So. Western, L.A. 6	10.00	\$10.00				
Gibbs Bros. Electric 702 No. Broadway, L.A. 12	10.98			\$10.98		
Hoover Company 8705 West 3rd, L.A. 48	16.33					\$16.33
Jesse M. Few Electric Co. 1515 West 7th, L.A. 17	10.94		10.94			
Los Angeles Soap Co. 617 East 1st, L.A. 54	28.66				\$28.66	
Los Angeles Times 202 West 1st, L.A.	11.76		11.76			
MacMillan, Robert 1238 No. Mariposa	24.54					24.54
McConnell, A. F. 418 So. Normandie	11.00				11.00	
Murphy Bed Sales Co. 8048 West 3rd, L.A. 48 - Dis. <u>.31</u>	15.50 15.19			11.50		4.00
Normandie Refrigeration 4221 Beverly Blvd.	503.98		4.00			499.98
Paramount Clean. & Dyers 4368 West 3rd, L.A. 5	52.89	9.77			43.12	
Pfeiffers Upholstering Co. 4812 So. Western, L. A.	338.25		112.75	112.75		112.75

Name & Address	Total	CA	FM	LL	OC	WA
Red Lilly Plumbing	\$192.16	\$26.39	\$88.63	\$69.07	\$8.07	--
72316 Hyperion, L.A. - Disc. <u>19.21</u>	\$172.95					
Service Supply Co.	24.30		24.30			
7265 Beverly Blvd. - Disc. <u>.49</u>	23.81					
Truman Doyle Method, Inc.	43.56		36.46			7.10
7116 Santa Monica Blvd. - Disc. <u>.87</u>	42.69					
Turell, Edith J.	38.70		38.70			
5337 La Cresta Court, L.A.						
United Upholstering Co.	10.15		10.15			
3000 Sunset Blvd.						
West Coast Specialty Co.	146.20	18.43	36.18	16.24	28.80	46.55
550 So. Western - Disc. <u>2.92</u>	143.28					
Western Union	15.62	3.05	4.54		8.03	
741 So. Flower, L.A. 17						
Wilshire Type. & Office Equip.	6.13					
143 So. Western						
Citizens Nat'l Bank-Fed. Deposit. Rec.	562.63					
Liberty Mutual Insurance, L.A.	31.83			31.83		
Jean Findeisen- office	103.18					
Dep't of Water & Power, 207 So. B'way	141.61			141.61		
Pacific Telephone & Tel. Co.	865.66	331.26	265.57	--	260.95	7.88
740 So. Olive, L. A.						
So. Calif. Gas Co.	321.78	84.68			124.30	112.80
810 So. Flower, L. A.						
TOTAL	<u>\$6,121.40</u>					

RECAPITULATION: Balance in bank as of February 28, 1954: \$26,819.11

Payments as listed above..... 6,121.40

Balance as of March 10, 1954..... \$20,697.71

LIST OF ALL KNOWN CREDITORS OF THE FORMER RICHMAN TRUST
WITH NAMES, ADDRESSES, AND AMOUNTS OF CLAIMS, INCLUDING
BOTH SPECIFIC AND CONTINGENT CLAIMS, AS OF MARCH 10, 1954

<u>Name & Address</u>	<u>Nature of Claim</u>	<u>Amount</u>
Air Pollution Control, Inc. 357 No. La Brea, Los Angeles	Catalytic unit at Canterbury and " at Oliver Cromwell	\$1,329.40 1,329.40
Calif. Refrigeration Main. Co. 5905 Melrose Ave., L. A. 38	For dissatisfactory work at Western Arms	61.10
Los Angeles Times 202 West 1st, L. A.	Advertising, March 1 to March 5 for Fountain Manor	4.68
H. L. Byram, Tax Collector Hall of Justice, L. A. 12	2nd installment taxes due April 10 on the five buildings	14,858.31
Payroll taxes:		
Withholding tax		262.55
F.O.A.B. Tax- Employees		125.96
State Unemployment Insurance-Employer		332.71
Mutual Benefit Life Insurance Co. c/o Pacific Mortgage Corp. 210 West 7th, Los Angeles	Oliver Cromwell Trust Deed Payable \$2,027.25 monthly -Balance-	165,993.71
Frederick I. Richman 417 South Hill, Los Angeles	Management Fee for Nov., 1953 in amount claimed by F. I. Richman to be 10% of \$31,043.33...	3,104.33
Fees to Receiver and his Attorneys in amounts to be fixed by the Court.		
Pacific Telephone & Telegraph Co. 740 South Olive, Los Angeles	House bills from following dates: Canterbury-2/6/54; Fountain Manor- 2/11/54; and Oliver Cromwell-2/21/54, and Managers' telephone bills.	
Department of Water & Power 207 South Broadway, L. A.	Bills from: Canterbury-2/12/54; Fountain Manor-2/10/54; La Loma-2/25/54; Oliver Cromwell, 2/5/54; and W.Arms-2/10/54	
Southern Calif. Gas Co. 810 So. Flower, Los Angeles	Bills from: Canterbury-2/12/54; Fountain Manor-2/5/54; La Loma-2/3/54; O.Cromwell-2/25/54; Western Arms-2/16/54.	

SCHEDULE D

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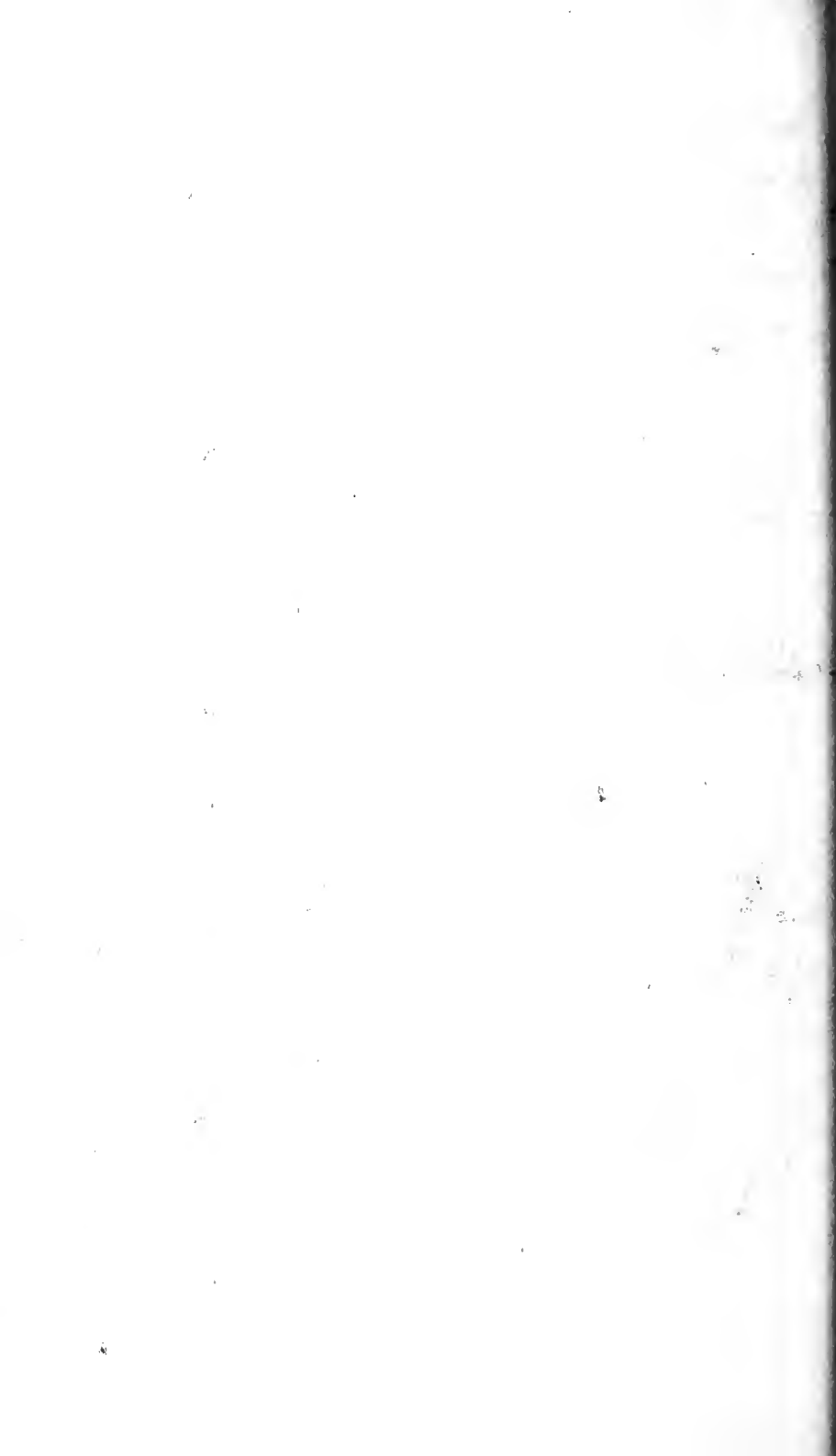
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<u>Name & Address</u>	<u>Nature of Claim</u>	<u>Amount</u>
A. Reeser & Sons 765 Merchant, Los Angeles	For undelivered dining ordered for the Mountain Manor	9 ⁰⁰ .32
Pacific Telephone & Telegraph Co. 760 South Olive, Los Angeles	Listing of the Canterbury, Mountain Manor, and Oliver Brownwell Mt. Hotels in the Classified section of the Telephone Directory (to come out in August, 1954)	2.75 monthly
Barker Bros. 7th & Figueroa	For Mountain Manor linen ordered but not delivered in February	

[Endorsed]: Filed March 18, 1954.



[Title of District Court and Cause.]

NOTICE OF HEARING ON (1) FIRST AND
FINAL REPORT OF RECEIVER, (2)
PETITION FOR ALLOWANCE OF FEE
TO RECEIVER, AND (3) PETITION FOR
ALLOWANCE OF FEES TO ATTORNEYS
FOR RECEIVER

To Plaintiff Lyda Tidwell and Messrs. Martin,
Hahn & Camusi, her Attorneys of Record, and
to Defendant Frederick I. Richman and Joseph
T. Enright, Esq., and Messrs. Brady, Nossaman & Paulston, his Attorneys of Record, and
to all known creditors of the former Richman
Trust as of the close of business on March 10,
1954.

Notice Is Hereby Given that the following matters will come on for hearing on Monday, April 12, 1954, at the hour of 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, before Honorable Ernest A. Tolin, Judge of the above entitled Court, in Court Room No. 6 in the United States Court House and Post Office Building, Los Angeles, California, to wit:

1. First and final report of Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, [157] said Roy E. Hallberg being hereinafter referred to as "the Receiver."

2. Petition for allowance of a fee to the Receiver in such an amount as said Court may find to be just

and reasonable for the services necessarily rendered by him as Receiver during the period commencing December 1, 1953, to and including February 28, 1954.

3. Petition for allowance of fees to FitzPatrick & Whyte and John Whyte, as attorneys for the Receiver, in the sum of \$3,000 for ordinary legal services necessarily performed by them during the period commencing November 30, 1953, to and including March 17, 1954, and in such further sum as said Court may find to be just and reasonable for extraordinary legal services necessarily performed by them during the same period.

Dated: March 24, 1954.

FITZPATRICK & WHYTE,
JOHN WHYTE,

/s/ By JOHN WHYTE,
Attorneys for the Receiver [158]

Affidavit of Service by Mail attached. [159]

[Endorsed]: Filed March 24, 1954.

DEFENDANT'S EXHIBIT B

[Title of District Court and Cause.]

DISMISSAL WITH PREJUDICE

Comes now the plaintiff individually and as co-trustee and as beneficiary under Richman Trust, and dismisses the above-entitled action with prejudice as against all defendants.

Dated this 3rd day of March, 1954.

/s/ LYDA TIDWELL

MARTIN, HAHN & CAMUSI,

/s/ By LAURENCE B. MARTIN,

Attorneys for Plaintiff

It is so ordered except that jurisdiction is retained over all monies, credits and assets in possession or under control of Roy E. Hallberg, receiver heretofore appointed herein, and over said receiver and to fix his compensation and allow his expenses including fee for his attorney.

March 22, 1954.

/s/ ERNEST A. TOLIN,

Judge

[161]

[Endorsed]: Filed and entered March 25, 1954.

[Title of District Court and Cause.]

OBJECTIONS AND ANSWER TO REPORT
AND PETITIONS OF RECEIVER AND
HIS ATTORNEY FOR FEES

Comes Now defendant, Frederick I. Richman, for himself and other interested parties, and in answer to the Report and Petition of the Receiver, Roy E. Hallberg, dated March 18, 1954, alleges:

1. Answering paragraph 3, page 2, line 17, alleges that the Receiver took possession of the properties by exercising dominion and control over each

of the five managers managing the apartment houses and gave directions to the Union Bank and Trust Company where the funds of the Richman Trust were deposited, commencing November 30, 1953, instead of December 2, 1953, as alleged.

2. Answering that portion of paragraph 4, page 3, line 16, alleges that the Receiver has failed to retain possession and control of \$785, or more, which was under his control and dominion, in the form of petty cash in the possession of the five managers of the five apartment houses, and the Receiver has permitted this money to be surrendered to the plaintiff, Lyda Tidwell.

3. Answering the allegations of paragraph 5, commencing page 3, line 17 to page 8, line 6, admits that the Receiver, usually through others [163] designated as his agents, most, if not all of whom, have been compensated for services out of funds of the estate; did direct the Union Bank to transfer the Richman Trust funds to him; did employ Roy Harrison, who had for many months kept the books of Richman Trust; did collect the rents from the five apartment house managers, which five apartment house managers had for many months collected the rents; did deliver supplies on some occasions to some of the apartments; did continue a policy of insurance, pay County taxes and move files. Upon information and belief, defendant denies that the Receiver did inspect the apartment houses on more than two occasions; alleges he did, by agents exercising in their discretion, supervise certain renovating at the Fountain Manor and West-

ern Arms Apartments, and place Christmas trees in the apartment houses; did, through his counsel, petition the Court to pay a customary and usual Christmas bonus theretofore paid by the Richman Trust; did terminate fire insurance policies and a program of many years duration established by Richman Trust with the approval of all interested parties of Richman Trust, and place in effect mutual insurance issued by Liberty Mutual Insurance Company, which may for a particular year result in a discount of 10%, but your answering party is informed and believes, and upon information and belief, alleges it would result in a greater cost paid claims considered; did, through agents, change the bank account from Union Bank to a bank at Third and Western Avenues; did attempt to revise without completion an accounting system; did, in December, review an Order of the Los Angeles County Air Pollution Authority, being a duly constituted Government agency, and a contract approved by that Authority made by your answering defendant with Air Pollution Control, Inc., and did, in December, direct his agent to direct the Air Pollution Control, Inc., not to perform the contract, resulting in the Order of the Government Authority not being performed, and as a direct and proximate consequence of the act of the Receiver, a criminal misdemeanor complaint was issued by the Clerk of the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, against your answering defendant and the [164] manager of one of the apartment houses: your answering

defendant is informed and believes, and upon information and belief, alleges that the Receiver did, through agents, supervise some repainting of the lobby of the La Loma, accompany appraisers of the plaintiff, obtain bids on painting, examine apartments, confer with upholsterers, select linens, distribute payroll checks, purchase supplies, confer with Air Pollution Control's district officers after the criminal complaint citation had been issued, confer with the Building Department of the City of Los Angeles, confer with the Director of Internal Revenue, prepare a claim for workmen's compensation for a manager of the Oliver Cromwell Apartments, fail to be available to render services and thereafter fail to supervise repair of the refrigeration unit at the Western Arms Apartments, did appear and testify in support of his petition for authority to renovate individual apartments. Your answering defendant is informed and believes, and upon information and belief, states that the Receiver's testimony was at least very inaccurate, if not untrue, as to the number of vacancies and the reasons given for the tenants having then recently vacated certain of the apartments; that he did confer with one or more of the attorneys for the plaintiff as to the method of capitalizing expenses and other matters, but at all times failed and neglected to confer with your answering defendant, although directed by the Court to do so; that he did confer with his attorney in an effort to submit a report as required by the rules of this Court, and being then unable to prepare the report, did, thereafter,

obtain an Order of this Court extending his time within which to file the report.

4. Answering paragraph 6, page 8, line 6, your answering defendant can not at this time admit or deny the accuracy of schedules B and C of the accounting for the reason that it will require additional time to audit the incomplete records, files and invoices kept and maintained by the Receiver. That based upon the examination of the records of the Receiver at this time, defendant alleges, upon information and belief, that page 1 of the schedule B, Western Arms amount shown as \$4,975.75, is erroneous in that the amount should be \$4,707.40. Page 2, schedule B, Canterbury receipts [165] shown as \$8,307.31 should be \$9,059.59. Western Arms amount in the sum of \$4,185.94 is erroneous. Schedule B, page 3, the details shown under the column "Disbursements for December, 1953, Operating, Maintenance, and Renovation Expense (see Exhibit II hereto)" is inaccurate, incomplete and incapable, at least as of this time of audit. Schedule B, page 4, reflects the sum of \$1,789.29 as being office expense, to which amount should be added employer's contribution, plus \$95.67, \$84.50 and \$111.50, or more, for social security and unemployment insurance when ascertaining presently known expenses of the Receiver, which expenses are normally borne by and paid by apartment house property managers when receiving compensation of approximately 5%, dependent upon the services they render. Page 2, Exhibit 2, schedule B, reveals the expenditure by the Receiver of \$638.16 and \$1,-

389.09, as and for trust deed note payment upon the Oliver Cromwell, due on March 1, 1954, which payment was made by the Receiver on February 27, 1954, after the Court had made its Order of February 26, 1954, directing the Receiver to retain all monies then in his possession. That the accounting reflects numerous items under the head "Office" or "Other", which can not at this time be audited, or the reason for their expenditure ascertained. That page 4 of Exhibit B reveals the sum of \$785 as being "Imprest Petty Cash Funds on Apartments, February 28, 1954". Your answering defendant is informed and believes that the Receiver failed and neglected to retain possession and control of these funds as required by the Court Order of February 26, 1954, and has relinquished control and possession of these funds to the plaintiff in this action. Defendant is further informed and believes, and upon information and belief, states that the Receiver has correctly alleged on page 12, line 32, that he failed to collect approximately \$2,000 rents received by the five managers of the apartment houses during the period February 26th to the 28th, inclusive.

5. Answering paragraph 7, defendant alleges that the rental factor was no higher during the Receiver's control than it had been during similar months of many previous years; that the Receiver lent no credit of [166] any kind or nature to the financing of the operation of the property; that there was ample cash available to fulfill the contracts with Air Pollution Control, Inc.; denies that the Re-

ceiver expended a great deal of his time in analyzing and appraising the condition of the apartment houses; alleges that the Receiver lacked knowledge and knowhow in attending to the parapet wall problems. As to the remaining opinions and conclusions of the Receiver's allegations, defendant here refers to the remainder of this, his answer, as an answer to these allegations.

6. Answering the allegations of paragraph 8, page 12, line 21, defendant alleges that the Receiver spent very little of his time in the administration of the receivership properties, in fact so little time was expended that his directions disrupted the operations of the property. That his services consisted primarily in his delegating his duties to others and these services consisted simply of the collecting of monies from managers who had been for many months and still are, excepting one, managing each of the individual apartment houses. That the services rendered were rendered in a negligent and incompetent manner. That the Receiver lacked fidelity to performing the details required of him in operating five apartment houses consisting of approximately 409 apartments. That the Receiver's indirect or possible claim of compensation in the amount of 5% of the gross receipts, plus a further claim for extraordinary services, is excessive, unreasonable, and inequitable. That the Receiver did delegate most, if not all, of his duties to others and has, from the funds collected, paid others for the services they rendered. That the Receiver has issued checks to Katherine Cosgrove in the amount of

\$29.43 and \$29.40 and possibly others, and your answering defendant is informed and believes, and upon information and belief, states that there are no records available to show the reason for these payments. That your answering defendant is informed and believes, and upon information and belief, alleges that the Receiver represented to the Court, before his appointment, that he had for some years engaged in the management of property similar to the property of the Richman Trust, and that his main [167] vocation for some years was in the management of such property, including management under Court Receivership. That defendant is informed and believes, and upon information and belief, alleges that the Receiver had not had such experience; that the Receiver, in fact, had little, if any, knowhow in the management of similar property, or in the rendition of executive and administrative services. Defendant is further informed and believes, and upon information and belief, states that the Receiver misrepresented to this Court his business experience, his educational qualifications, and the amount of time he had available to administer the assets of the Richman Trust.

7. Answering the Petition of Fitzpatrick and John Whyte, dated March 18, 1954, praying for an order allowing them \$3,000.00 as ordinary attorneys' fees, and that this Court award an additional sum as and for extraordinary fees, alleges:

A. Defendant is informed and believes and upon information and belief denies that said attorneys

expended 91 hours in rendering legal services to the Receiver, and further alleges that a rate of compensation in excess of \$30.00 per hour, is excessive and unreasonable;

B. That the attorneys for the Receiver were not required to render any extraordinary services and, in fact, the services rendered consisted of ordinary consultation upon the duties of a Receiver in qualifying as a Receiver, attempting to prepare a report, as required by the Court rules, dictating and causing to be typed a Petition for authority to renovate apartments, and the preparation of theirs and the Receiver's Petition for their fees, except a problem pertaining to the compliance with a Los Angeles Air Pollution Control District Order, and contracts required by it to be performed. Concerning the rendition of these services, defendant is informed and believes and upon information and belief alleges [168] that the attorneys either failed to research the law as to the duties of Federal Receivers to comply with orders of local authorities, or without aid of research erroneously informed the Receiver that he need not comply with the Pollution District's Order. That said attorneys are not entitled to compensation for extraordinary services rendered in an effort to obtain a dismissal of the criminal complaint filed against one of the Receiver's agents, a manager, and your answering defendant, under the circumstances.

8. Your answering defendant alleges that the Receiver, Roy E. Hallberg, failed to perform the

Orders of this Court and should be surcharged for the following amounts of money:

A. On February 26, 1954, this Court made its Order directing the Receiver to surrender possession of the apartment house properties on or before March 1, 1954, and to retain in his possession all the monies then collected and under his control or dominion and the monies on deposit in the bank account opened and maintained by the Receiver. That the Receiver failed and neglected to collect the monies received by some, if not all, of the five managers of the five apartment houses during the period February 26, 27 and 28, 1954. That page 12 of the Receiver's report acknowledges this fact and upon the acknowledgment there made, defendant alleges that the Receiver should be surcharged for the sum of \$2,000.00.

B. That the Receiver's report, schedule B, page 4, acknowledges that as of February 28, 1954, there were petty cash funds in the amount of \$785. Your answering defendant is informed and believes, and upon information and belief, alleges that the [169] Receiver permitted this sum of money to remain in the possession of the managers of the five apartment houses and that this sum of money is now in the possession of or under the control of the plaintiff, Lyda Tidwell. That the Receiver should be surcharged with this sum of money, to wit, \$785.00.

C. That your answering defendant is informed and believes, and upon information and belief, alleges that after the making of the Order of this

Court, dated February 26, 1954, above alleged, and not earlier than February 27, 1954, the Receiver did issue his check in the sum of \$2,027.25, being for the payment of interest and a principal installment upon a trust deed note secured by the Oliver Cromwell Apartments, which note was not due or payable until March 1, 1954, and which payment was made by the Receiver contrary to the provisions and requirements of the Order dated February 26, 1954, and the Stipulation upon which it was based. Therefore, the Receiver should be surcharged in the sum of \$2,027.25.

D. That your answering defendant is informed and believes, and upon information and belief, alleges that other funds were expended by the Receiver contrary to his rights and obligations or contrary to Orders of this Court. That your answering defendant will, upon audit being made of the records of the Receiver, specifically allege the amounts, dates, and parties to whom [170] paid, being now only informed of the issuance of two checks to one Katherine Cosgrove.

E. That the Receiver, on or about December 31, 1954, failed to pay to your answering party the sum of \$3,104.33 as and for the services of your answering party in accordance with the terms and conditions of the Richman Trust Agreement dated November 1, 1945, although said Receiver has reported in his accounting, schedule B, that your answering defendant is a creditor in the amount of \$3,104.33.

F. Your answering defendant is informed and believes, and upon information and belief, alleges that it would be difficult, if not impossible, for the Honorable Ernest A. Tolin, Judge presiding in the above entitled action and Receivership, to impartially try the issue involving the reasonableness of the fees to be paid to the Receiver, Roy E. Hallberg, and his attorneys, Fitzpatrick and Whyte, because of the following circumstances:

(a) The representations made by the Receiver concerning his qualifications, experience and know-how, were made to the Honorable Ernest A. Tolin, and it may require said Honorable Ernest A. Tolin to appear as a witness in a proceeding before him.

(b) That although the Honorable Ernest A. Tolin was only a casual acquaintance of Roy E. Hallberg, he did duly appoint said Roy E. Hallberg, Receiver in [171] this proceeding, and may, because of his having appointed the Receiver, be inclined to advocate, or to a degree defend the conduct or assert the rights of the Receiver.

(c) That the Honorable Ernest A. Tolin, did, on December 2, 1953, acknowledge that before the receipt of evidence at the trial in the above entitled action and before the rendition of his decision of November 30, 1953, that he had obtained information from accountants who asserted improper conduct on the part of your answering defendant in complying with discovery orders issued by this Court. Specifically, at page 48, line 5, for example. That there was at no time any hearing concerning the conduct of your answering defendant, save and

except on one occasion after your answering defendant had exhausted the discovery process of this Court, except deposition proceedings, to obtain possession or inspection of a file containing correspondence had between plaintiff and defendant, your answering defendant did take possession of this file and did cause the file to be lodged with this Court upon discovering that the plaintiff had control and dominion of said file.

(d) That the terms and conditions of the Order of this Court, dated February 26, 1954, [172] amongst other things, required that the Receiver retain in his possession "money in bank and under the control of said Receiver". That in all other respects the Receiver was relieved of his then obligations, except the duty to collect monies for rents, to and including 5:00 p.m., February 28, 1954. That the Receiver was, by virtue of this Court Order, required to file his accounting in the due course of business and upon his accounting being settled and an Order made upon his and his attorneys' fees, the remainder of the monies in the possession of the Receiver were subject to the directions of the parties in the above entitled action. That the plaintiff and defendant had, on February 26, 1954, entered into an agreement in writing determining their rights to the monies in the possession of the Receiver. That a true and correct copy of this agreement is attached hereto and marked Exhibit A. That under and pursuant to the terms and provisions of this agreement, plaintiff, Lyda Tidwell, and your answering defendant, are en-

titled to receive all monies remaining in the hands of the Receiver, and in the event they can not agree upon their distribution, then each is entitled to apply to a Court of competent jurisdiction to initially and originally determine their respective rights. [173]

Wherefore, your answering defendant prays:

(1) That the Honorable Ernest A. Tolin request the presiding Judge of the above entitled Court to assign another Judge of this Court to hear and determine the petitions of the Receiver and his attorneys for fees;

(2) That the petitions and this answer and the answer of any other interested party be set for trial upon the issues created by said pleadings;

(3) That the trial of the issues created by these pleadings be not had until your answering defendant has had an opportunity to avail himself of the discovery processes of this Court to prepare for a hearing upon the Receiver's petition for more than \$4,500 fees and the attorneys' petition for more than \$3,000 fees and for such other and further relief as may be just and proper in the premises.

Dated: April 5, 1954.

BRADY, NOSSAMAN & PAULSTON
and JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT,

Attorneys for Defendant

[174]

EXHIBIT A
(Defendants' Exhibit H)

[Letterhead of Joseph T. Enright]

Laurence B. Martin, Esq.
Martin, Hahn & Camusi,
530 West 6th St. Suite 701
Los Angeles 14, California

Feb. 19, 1954

Re: Tidwell vs. Richman

Dear Sir:

I am in receipt of your letter of the 16th instant and wish to thank you for the same.

As I review the matter, the court decision gave your client what she was offered two and a half years ago before suit was filed, namely, a division of the trust. The court in the decision avoided any intimation of fraud on the part of Mr. Richman and your auditing has not produced any fraud. Therefore, until such time as the last court has sustained your contention of any fraudulent acts on the part of Mr. Richman, you may not expect any concession from Mr. Richman that in any way implicates him with fraud.

Your intimations that any arrangement Mr. Richman might make that he would not live up to are not appreciated. Bear in mind the record in this case is full of examples of Mrs. Tidwell changing her mind after agreements have been made, and I can assure you that anything Mr. Richman agrees to will be carried out.

In regards to your request that I spell out "ex-

actly" the precise terms and wording of the release, I do not think that is at all necessary. Any agreement made contemplates a full release of any and all claims that either Mr. Richman or Mrs. Tidwell have or think they have against the other from the beginning of the world to the present time. If this matter is going to be terminated, it is my desire to have it terminated completely and not by use of trick terminology which might subject it to other law suits in the future.

I construe the first paragraph on the second page of your letter of February 16th as being a proposal for Mr. Richman to submit a buy or sell proposition. Mr. Richman is not interested in the \$500,000.00 figure inasmuch as that was a negotiation figure and you have seen fit to put him in the spot of bidding against himself, but now that you have asked for a buy or sell [175] proposition I am authorized to submit the following, and Mrs. Tidwell may buy or sell as she sees fit to terminate all matters. The proposition is as follows:

1. Both parties mutually release each other of any and all claims known or unknown, that they have against the other from the beginning of the world to the present time.

2. Both parties shall bear their own expenses.

3. Mutual dismissals with prejudice will be entered in the law suit.

4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and

shall assume all operating obligations of the Richman Trust from March 1, 1954 on or until the re-appointment of a receiver as might occur under 7 (c) hereof.

5. The receiver shall file his report and after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman.

6. Richman Trust shall be terminated and the property therein and now being controlled by the receiver distributed in equal shares as undivided interests to Mrs. Tidwell and Mr. Richman.

7. Mrs. Tidwell shall have her election to either buy Mr. Richman's undivided half interest in the assets of Richman Trust, or to sell her undivided one-half interest in the assets of Richman Trust for the sum of \$600,000.00, payable on the following basis:

(a) \$100,000.00 cash shall be paid February 26, 1954 by the party buying to the other upon the notification by Mrs. Tidwell as to her determination of whether she is buying or selling the undivided interest of the assets in Richman Trust. [176]

(b) \$500,000.00 shall be paid through escrow to the party selling on or before May 1, 1954.

(c) In the event the \$500,000.00 is not paid through escrow on or before May 1, 1954, then a receiver may be re-instated to operate the assets of Richman Trust and the \$100,000.00 paid upon Mrs.

Tidwell's election shall be forfeited and all items hereinabove enumerated, except the forfeiture of the \$100,000.00 and retention of operating income as provided in 4 hereof, shall be of no force and effect, and the parties shall be in the same position as they now are except for the forfeiture of the \$100,000.00 and retention of operating income.

8. Mrs. Tidwell shall notify Mr. Richman of her election on or before February 25, 1954 and shall deliver to Mr. Richman on or before February 26, 1954, in writing, her unqualified acceptance of the terms herein stated and her election, and on February 26, 1954, the \$100,000.00 above mentioned shall be paid to the party entitled to receive the same.

9. All parties will execute whatever is necessary to carry out the terms of this arrangement.

10. Each party may do whatever he or she deems necessary to protect his or her legal position prior to May 1, 1954.

Very truly yours,

/s/ Joseph T. Enright

JTE:MH

The above is acceptable to me and I agree to be bound by the terms thereof.

/s/ Frederick I. Richman

[177]

[Letterhead of Martin, Hahn & Camusi]

Mr. Frederick I. Richman
417 South Hill Street, Suite 926
Los Angeles 13, California

Feb. 25, 1954

Re: Tidwell vs. Richman

Dear Sir:

We desire to acknowledge receipt of the letter of February 19th, 1954, sent to us by Mr. Enright, your attorney, and on which your agreement and approval was duly noted.

We hereby advise you that Mrs. Tidwell accepts unqualifiedly the terms and provisions as set forth in said letter of February 19th, 1954, and that she elects to and agrees to purchase all of your right, title and interest in the assets of the Richman Trust, on the terms, provisions and conditions stated therein, and for the sum and amount therein set forth.

In accordance with said letter of February 19th, 1954, and as evidence of good faith in her acceptance, we are transmitting herewith a Cashier's Check, in the sum of \$100,000.00, payable to you. Also, in accordance with the terms of your proposal, which Mrs. Tidwell does here and now accept, she will pay the balance as outlined by you. She is prepared to open an escrow so she may complete the purchase of your interest as expeditiously as possible. In accordance with the usual custom in such matters, and as buyer, we would prefer to open and handle the escrow through the main office of the California Bank. We shall, in all respects, do our part to carry out the terms and provisions of the

proposal in entire good faith, and we are sure you are equally desirous of bringing this entire situation to a conclusion as expeditiously as possible.

This letter is addressed to you since that appears to be your desire in the communication of February 19th, 1954, and is being delivered to you personally, or, in the event you are not at your office, the original will be left at your office. A signed copy is being likewise mailed to you at your office, and, of course, a copy thereof is being transmitted to your attorney, Mr. Joseph T. Enright.

Very truly yours,

Martin, Hahn & Camusi,

/s/ By Laurence B. Martin

LBM:GP

The above acceptance of the proposal of Frederick I. Richman to sell all of his interest in the Richman Trust to me is approved and agreed to by me, and I agree to be bound by the terms of said proposal of February 19th, 1954, and the unqualified acceptance as contained in the above letter.

/s/ Lyda R. Tidwell

P.S.—The Cashier's Check in the amount of \$100,000.00 payable to you, is being delivered to you personally, or left at your office in the event you are absent therefrom, along with the original of this letter. /s/ L.B.M. [179]

Duly Verified.

Affidavit of Service by Mail attached. [180]

[Endorsed]: Filed April 6, 1954.

[Title of District Court and Cause.]

OBJECTIONS TO FIRST AND FINAL
REPORT OF RECEIVER

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

Comes Now Plaintiff, Lyda Tidwell, and objects
to the First and Final Report of the Receiver, for
the following reasons:

Although plaintiff does not contest the accuracy
of the figures listed in said First and Final Report,
hereinafter referred to as "Receiver's Report",
plaintiff does object to the Receiver's Report inso-
far as final approval of said report may affect her
rights to a division of the funds remaining with
defendant, Frederick I. Richman, after allowance of
Receiver's and Receiver's attorney's fees:

By court order dated February 26, 1954, it was
provided, among other things, that:

"* * * the Receiver, Roy E. Hallberg, shall be
relieved of his active duties of management, con-
trol and possession of the assets known as the Rich-
man Trust, as of five o'clock p.m., [181] February
28, 1954, and that the said Receiver, Roy E. Hall-
berg, his agents and employees, and all other
agents, servants and employees of the Richman
Trust, give over control and possession to Lyda
Tidwell, plaintiff, of all the assets of the said Rich-
man Trust, excepting money, in bank and under the
control of said Receiver, * * *"

The above court order was obtained by stipula-

tion of the parties as one of the steps required to finally and completely dispose of the within litigation. The agreement for settlement is controlled by an offer letter of defendant, dated February 19, 1954, and by an unqualified acceptance letter of plaintiff, dated February 25, 1954.

The complete offer of defendant, as stated in the offer letter of February 19, 1954, reads as follows:

“* * * The proposition is as follows:

1. Both parties mutually release each other of any and all claims known or unknown, that they have against the other from the beginning of the world to the present time.

2. Both parties shall bear their own expenses.

3. Mutual dismissals with prejudice will be entered in the law suit.

4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 on or until the re-appointment of a receiver as might occur under 7(c) hereof.

5. The receiver shall file his report and after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman.

6. Richman Trust shall be terminated and the property therein [182] and now being controlled by the receiver distributed in equal shares as un-

divided interests to Mrs. Tidwell and Mr. Richman.

7. Mrs. Tidwell shall have her election to either buy Mr. Richman's undivided half interest in the assets of Richman Trust, or to sell her undivided one-half interest in the assets of Richman Trust for the sum of \$600,000.00, payable on the following basis:

(a) \$100,000.00 cash shall be paid February 26, 1954 by the party buying to the other upon the notification by Mrs. Tidwell as to her determination of whether she is buying or selling the undivided interest of the assets in Richman Trust.

(b) \$500,000.00 shall be paid through escrow to the party selling on or before May 1, 1954.

(c) In the event the \$500,000.00 is not paid through escrow on or before May 1, 1954, then a receiver may be re-instated to operate the assets of Richman Trust and the \$100,000.00 paid upon Mrs. Tidwell's election shall be forfeited and all items hereinabove enumerated, except the forfeiture of the \$100,000.00 and retention of operating income as provided in 4 hereof, shall be of no force and effect, and the parties shall be in the same position as they now are except for the forfeiture of the \$100,000.00 and retention of operating income.

8. Mrs. Tidwell shall notify Mr. Richman of her election on or before February 25, 1954 and shall deliver to Mr. Richman on or before February 26, 1954, in writing, her unqualified acceptance of the terms herein stated and her election, and on February 26, 1954, the \$100,000.00 above mentioned

shall be paid to the party entitled to receive the same. [183]

9. All parties will execute whatever is necessary to carry out the terms of this arrangement.

10. Each party may do whatever he or she deems necessary to protect his or her legal position prior to May 1, 1954.

Very truly yours,

/s/ Joseph T. Enright

JTE:MH

The above is acceptable to me and I agree to be bound by the terms thereof.

/s/ Frederick I. Richman"

Plaintiff and defendant have performed all acts on their part to be performed in connection with their settlement of the case, except as hereinafter appears. Plaintiff now has title to all trust properties and defendant Frederick I. Richman has received the sum of \$600,000.00.

Plaintiff and defendant, Frederick I. Richman, are in disagreement as to the meaning of said agreement resulting from the offer letter of February 19, 1954, and its unqualified acceptance by plaintiff, and in further disagreement as to the debits and credits to be made to the fund in the hands of the Receiver. This honorable court cannot dispose of the balance of funds remaining in the hands of the Receiver, after making provision for payment of Receiver's fees and fees for the attorney for the

Receiver, until it resolves these questions. The various items in which plaintiff and defendant are in disagreement are as follows:

1. Plaintiff, Lyda Tidwell, was forced to pay real property taxes out of her own funds for the period January 1, 1954 through June 30, 1954, in the sum of \$14,858.31. Since real property taxes are an operating obligation of the trust, and the Receiver had not paid said taxes for the months of January and February, 1954, plaintiff claims that she is entitled to reimbursement out of the Receiver's fund in the sum of \$4,952.77.

2. The receiver made his Final Report without paying water, gas, [184] telephone and electric bills for a portion of the month of February, in the amount of \$1877.50. Plaintiff has now paid these bills and claims reimbursement from the Receiver's fund in this amount.

3. The Receiver has not paid the balances due on two catalytic units installed in the Canterbury and Oliver Cromwell Apartments in the sum of \$1329.40 each, or a total sum of \$2,658.80. These bills were contracted prior to February 28, 1954, and plaintiff claims reimbursement from the Receiver's fund in the amount of \$2658.80 for the reasons above stated.

4. The Receiver collected \$4,499.29 worth of March, 1954 rents in the preceding month of February. Plaintiff claims reimbursement for these March rents from the Receiver's fund since they represent March receipts and, therefore, belong only to plaintiff.

5. The purchase of defendant's interest in the Richman Trust by plaintiff was arranged through an escrow established at the Main Office of California Bank, 629 South Spring Street, Los Angeles, California. In said escrow, plaintiff was charged with the sum of \$577.50 for Internal Revenue Stamps placed on the deed of conveyance from defendant, Frederick I. Richman, to plaintiff. Plaintiff was also charged with defendant seller's escrow fees in the sum of \$329.00 in said escrow. These are charges which should be paid by seller, and plaintiff claims the total sum of \$906.50 from defendant personally. The escrow instructions specifically state the following language:

"These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me and with which agreement California Bank is not to be concerned."

6. There may be other operating expenses of the Richman Trust to February 28, 1954, which have not been paid by the Receiver, and plaintiff will ask leave to amend her objections accordingly should such appear to be the case.

Defendant, Frederick I. Richman, also makes certain claims to the Receiver's fund, as follows:

1. Defendant claims that one of the unpaid operating obligations of the Richman Trust is defendant's agent's fees for the month of November, 1953, in the amount of \$3,104.33. However, this is objected to by plaintiff. The intent of the agree-

ment between plaintiff and defendant is clear. Mutual releases have been executed, and both parties gave up any and all claims which they might have against the Trust and against each other. Defendant, Frederick I. Richman, has always "paid" one-half of the agent's fee since he was one of the beneficiaries. Plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, both also have claims for unpaid net income for the months of November and December, but these were lost to them by virtue of their agreement, and the same is true of defendant Richman's claim for agent's fees.

2. Defendant also claims that the Receiver erroneously made the March payment on the Oliver Cromwell loan, in the sum of \$2027.27. However, the report of the Receiver does not so indicate.

3. Defendant also claims that he is entitled to one-half of moneys collected by certain of the property managers over the week-end of February 27th and 28th. However, portions of these moneys were for February and portions were for March rents. The fair and reasonable interpretation of the agreement of the parties would be to pro-rate all rents to March 1, 1954.

Wherefore, plaintiff prays that the First and Final Report of the Receiver be settled and that the court take evidence with respect to an accounting between plaintiff and defendant, Frederick I. Richman, so that the court may be in a position to determine the respective rights of plaintiff and defendant Richman to the balance of the fund remaining in the Receiver's hands after payment has been

made therefrom to the Receiver and his attorney for services rendered by them.

MARTIN, HAHN & CAMUSI,
/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff,
Lyda Tidwell [186]

[Endorsed]: Filed April 7, 1954.

[Title of District Court and Cause.]

PLAINTIFF'S REPLY TO OBJECTIONS OF
DEFENDANT FREDERICK I. RICHMAN

Comes now Plaintiff, Lyda Tidwell, and in reply to Objections of Defendant, Frederick I. Richman, dated April 5, 1954, alleges as follows:

1. The Receiver was not to retain possession of and/or control of, \$785.00 or more in petty cash. That the order of court dated February 26, 1954, ordered that the Receiver was only to retain possession of money in bank. Furthermore, said petty cash constituted a part of the assets of the Richman Trust which were purchased by Plaintiff Tidwell and which belong to her solely, all in accordance with the agreement of the parties set forth by both of the Objections of Plaintiff and Defendant Richman herein.

2. Plaintiff denies that it would be difficult and/or impossible for the Honorable Ernest A. Tolin to try the issue involving reasonableness of fees in an impartial manner for any reason or reasons in controversy. [187] Plaintiff further al-

leges that this Honorable Court is the only court which has jurisdiction to try the issue of the reasonableness of the Receiver's fee and the fee of the attorney for the Receiver. And further, this Honorable Court is the only court which has jurisdiction to try the issue of Plaintiff's and Defendant Richman's rights to the fund remaining in the hands of the Receiver and the disposal of said fund.

3. With respect to other credits to which Defendant Richman claims he is entitled from the Receiver or from the fund in the Receiver's possession, plaintiff has already stated her position in her Objections previously filed, and reference is hereby made to such objections as though set forth herein in full.

4. The Receiver is entitled to a reasonable fee for his services and the attorney for the Receiver is entitled to a reasonable fee for legal services rendered the Receiver in this matter.

Wherefore, Plaintiff prays that the Final Report and Account and Petitions of the Receiver and his attorneys be settled after hearing and that this Court take evidence and declare the rights of Plaintiff and Defendant Richman to funds remaining in the hands of the Receiver, and order disposition of said fund in accordance therewith.

Dated this 8th day of April, 1954.

MARTIN, HAHN & CAMUSI,
/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff,
Lyda Tidwell [188]

Affidavit of Service by Mail attached. [189]
[Endorsed]: Filed April 12, 1954.

[Title of District Court and Cause.]

PLAINTIFF LYDA TIDWELL'S POINTS AND
AUTHORITIES IN SUPPORT OF HER
OBJECTIONS AND HER REPLY TO DE-
FENDANT RICHMAN'S OBJECTIONS

Court has jurisdiction to settle accounts, declare rights of Plaintiff and Defendant Richman to fund remaining in Receiver's hands and to order disposition in accordance therewith.

Defendant Richman claims on Page 11 of his Objections to the Receiver's Report that he and Plaintiff Lyda Tidwell are entitled to apply to a Court of competent jurisdiction to initially and originally determine their respective rights to the funds remaining in the hands of the Receiver.

This proposition is incorrect. This Court has jurisdiction of the fund and jurisdiction to decide what persons are entitled to distribution of the fund, and in what amounts.

In *Pacific Bank vs. Madera Fruit, Etc. Co.*, 124 Cal. 525, plaintiff dismissed suit after a Receiver had been appointed and after the receiver had taken possession of certain assets. Thereafter the receiver filed his account and petition and asked the court to "settle the same, fix his compensation, et cetera." Plaintiff then filed a motion to dismiss the [190] account and petition on the ground that the court had lost jurisdiction. However, the motion was overruled and this ruling was affirmed on appeal. The decision of the court notes that not only does the

court retain jurisdiction to settle the receiver's account, but it also retains jurisdiction to dispose of the funds in the receiver's possession, saying, the receiver,

* * * "is still amendable to the court as its officer until he has complied with its directions as to the disposal of the funds which he has received during the course of his receivership."

The Pacific Bank case also states, at P. 527,

* * * "If the court below lost jurisdiction of the case by virtue of the dismissal so that it could not settle the accounts of the receiver, nor make any disposition of the funds in his hands, how would the account be settled or the funds disposed of? The money on hand and collected by the receiver is in contemplation of law in the hands of the court to be disposed of as the law directs." (Emphasis ours.)

And,

"If the court in which the receiver was appointed cannot, after the dismissal of the case, settle and adjust the accounts of the receiver, to what jurisdiction will he resort? The dismissal of the case was the end of it as between the parties, but we think the court still retained the power to settle the accounts of its receiver and to direct the application of the funds in his hands." (P. 527) (Emphasis ours.)

It is clear that the receiver is holding funds for disposal at the direction of the court. In *Garniss vs. Superior Court*, 88 Cal. 413, [191] 417, the court

stated, quoting from Beach on Receivers, sec. 249,

“Though a receiver may be, and generally is, appointed upon the application of one of the parties interested in the property which he is to preserve, his holding is not merely for the benefit of such party, or of any other party; it is the holding of the court for the equal benefit of all persons who may be finally adjudged by the court to have rights in it;”’ (Emphasis ours.)

In *State vs. Gibson*, 21 Ark. 140, the court, referring to jurisdiction over a receiver after dismissal of the case, said,

“He was an officer of the court and subject to its orders in relation to the partnership effects placed in his hands as receiver until discharged by the court.”

To same effect, see *Ireland vs. Nichols*, 40 How. Pr. 85; *Whiteside vs. Pendergast*, 2 Barb. Ch. 471.

Respectfully submitted,

MARTIN, HAHN & CAMUSI,
/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff,
Lyda Tidwell [192]

Affidavit of Service by Mail attached. [193]

[Endorsed]: Filed April 12, 1954.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: April 12, 1954, at Los Angeles, Calif.

Present: Hon. Ernest A. Tolin, District Judge;
Deputy Clerk: Wm. A. White; Reporter: Virginia Wright; Counsel for Plaintiff: Wm. P. Camusi; Counsel for Defendants: Joseph Enright; Counsel for Receiver: John G. Whyte.

Proceedings: For hearing on (1) first and final report of Receiver; (2) petition for allowance of fee to Receiver; and (3) petition for allowance of fees to attorney for Receiver.

Court makes a statement that no evidence will be taken concerning the appointment of the Receiver in this action.

Court makes a further statement that if it orders an audit on its own motion, the charge will be made against the Receiver, but if one of the litigants challenges the Receiver's report and requests an audit, the charge for the same will be made against the challenging party.

Attorney for defendant states he will take the depositions of the Receiver and his attorney, after which he moves the Court to set the matter down for trial as to the issues of the payment of fees to the Receiver and his attorney.

It Is Ordered that issues of payment to Receiver and his attorney is set for trial May 11, 1954, 9:30 a.m., and It Is Further Ordered that issue of balance of remaining monies by the Receiver, after

payment of his fees and his attorney's, is set for pretrial hearing May 14, 1954, 10 a.m.

Counsel for both sides to file briefs re division of monies on, or before 5 p.m., May 9, 1954.

EDMUND L. SMITH,

Clerk

/s/ By WM. A. WHITE,

Deputy Clerk

[194]

[Title of District Court and Cause.]

PETITION TO DISQUALIFY AND AUTHORITIES

To the Honorable Ernest A. Tolin, Judge of the
above entitled court:

The Petition of Frederick I. Richman, defendant, respectfully represents that the only remaining issue to be determined by this Court in this action is the accounting and fixation of fees for the services of the receiver and his attorney. That there is now pending Petitions by the receiver and his attorney to have their fees fixed. That defendant has filed objections to these Petitions, in which objections defendant has alleged that the receiver misrepresented his experience, qualifications, and time he had available to act as receiver, which misrepresentations resulted in this Court appointing the receiver. That reference to these allegations are here made and these representations are more specifically hereafter stated. That because of the represen-

tations of the receiver Roy E. Hallberg and his failure to make a full and free disclosure of the facts pertaining to his experience, qualifications, and time he had available to act as receiver [195] of five apartment houses containing in excess of 400 apartments situate in the City of Los Angeles, and requiring the attention of a person experienced in the management and operation of said apartment houses and the full time of such a person, he is guilty of unclean hands, and this Court sitting as a court of equity when determining the amount of compensation to be paid said receiver, should consider the evidence upon the question as to whether or not the receiver Roy E. Hallberg is guilty of unclean hands in making said representations and concealing his lack of time and experience. That the Honorable Ernest A. Tolin is a material witness to the determination of what fees should be paid Roy E. Hallberg for his services as a receiver, in that Roy E. Hallberg made the following representations to the Honorable Ernest A. Tolin, before his appointment as receiver, and at a time when the Honorable Ernest A. Tolin was interviewing him to ascertain his availability, experience, and qualifications to act as receiver of said apartment houses and any other assets of the Richman Trust, which Trust assets were the subject matter of the above entitled suit.

1. Said representations being:

(a) That Roy E. Hallberg had experience in this type of work in Chicago; that he had for some years been associated with property management

operation in Chicago; that he had considerable acquaintance and experience in this type of work;

(b) That his main vocation for some years was in the management of real properties;

(c) That he had experience in connection with Court receiverships;

(d) That he had experience locally (Los Angeles area), in the management of his own real properties;

(e) That he, or his relatives, owned similar properties; [196]

(f) That he maintained a place of business in the Los Angeles area and had, during the past few years, been employed in an executive capacity by various corporations; and

(g) That he then had time and was available to manage and operate the above apartment house properties.

2. That the foregoing representations were not true in that:

(a) Roy E. Hallberg's sole experience in the management of property consisted of his acting for a period of approximately one year, about the year 1931, as an agent and employee of the owner of the bonds of a bank situate and conducting its business in Chicago, Illinois, which bank became defunct, necessitating the owner of the bonds taking possession of certain real property in Chicago, Illinois. That Roy E. Hallberg's experience in the year 1931 did not qualify him by experience or training to manage properties in the years 1953 and 1954 in the City of Los Angeles, and Roy E. Hallberg's sole

other experience was in the management of a 14 unit apartment house situate in South Pasadena, California during the period from December 20, 1949 to November 29, 1950, and in the management of an unfurnished flat consisting of 4 units, situate in the City of Pasadena, California, during the period December 29, 1950, to date, and said Roy E. Hallberg's experience in acquiring and selling two residences which were occupied by him when owned, in Los Angeles, California, and the acquiring of residential property at Corona Del Mar, California.

(b) That Roy E. Hallberg had no experience as agent or representative of elderly and/or wealthy relatives, in the management of apartment house property in Southern California, similar to the five apartment houses he undertook to manage and operate as receiver.

(c) That Roy E. Hallberg, the receiver appointed by this Court, knew at the time of his appointment that he would be employed by the County of Orange, State of California, as an auditor-appraiser, at a salary of approximately \$350.00 per month, and would be required to render services to said County for his compensation during the work days of each week and month thereafter. That, in fact, said Roy E. Hallberg did work for and was an employee of the County of Orange during the period that he was required to actively manage and operate the five apartment houses and other assets of the Richman Trust, and was paid a salary of approximately \$350.00 per month for his services each month.

(d) That Roy E. Hallberg's principal vocation

and occupation during the period 1933 until about March, 1947, was that of a wine salesman with headquarters at Brooklyn, New York, and thereafter said Roy E. Hallberg's occupation consisted of an attempt to sell electrical supplies, including Christmas tree lights, the establishing of distributorships for curtain rods, and an attempt to, after investing \$18,000.00 as a principal, to market a construction tooth for use upon earth-moving equipment. That said Hallberg's experience in each of these ventures did not relate to or in any manner qualify [198] him to operate in excess of 400 apartments situate in the City of Los Angeles.

3. That your petitioner is informed and believes, and upon information and belief states that it will be necessary to call the Honorable Ernest A. Tolin as a witness to testify concerning the representations made by Roy E. Hallberg, to establish your petitioner's objections to Roy E. Hallberg's Petition to be paid a reasonable fee for his services, in which petition Roy E. Hallberg alleges that a fee of approximately \$5,000.00 for his services during the period commencing with his appointment about December 2, 1953, to the termination of his active duties on February 26, 1954, is a reasonable fee. That your petitioner has no objection to Roy E. Hallberg being awarded a reasonable fee, commensurate with the time he expended, based upon said Hallberg's earning capacity which has been for three or more years last past approximately \$106.00 per week, and which sum is the reasonable value of his services and the time Roy E. Hallberg expended.

That in this connection Petitioner is informed and believes and upon information and belief states, that Roy E. Hallberg represented to the Honorable Ernest A. Tolin that he would actively manage said five apartment houses; that Roy E. Hallberg did not actively manage said apartment houses, but did delegate his duties to Katherine Cosgrove, whom he (Hallberg) represented to be his secretary and did, for a period of time after his appointment, conceal that Katherine Cosgrove was, in fact, Mrs. Roy E. Hallberg.

Wherefore, petitioner prays that the Honorable Ernest A. Tolin disqualify himself to hear and determine the issues pending upon the fees of Roy E. Hallberg and his attorney, and to hear and determine the accounting of Roy E. Hallberg.

Dated: April 30, 1954.

BRADY, NOSSAMAN & PAULSTON
and
JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT,
Attorneys for Defendant [199]

Duly Verified.

Authorities

1. "Any justice or judge of the United States shall disqualify himself in any case in which he * * * is * * * a material witness * * *" 28 USCA 455.

2. No affidavit or particular procedure is required for the making of a request to the court for

the presiding judge to disqualify himself under 28 USCA 455.

Cyc. Fed. Proc. 2nd Ed., Vol. 1, P. 32, Paras. 22 and 23. [200]

Affidavit of Service by Mail attached. [201]

[Endorsed]: Filed April 30, 1954.

[Title of District Court and Cause.]

SUPPLEMENTAL PETITION FOR ALLOW-
ANCE OF FEES TO ATTORNEYS FOR
RECEIVER

To the Honorable Ernest A. Tolin, Judge of the
above entitled court:

Comes now Messrs. FitzPatrick & Whyte and John Whyte, as attorneys for Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, and for their supplemental petition for allowance of fees for additional legal services heretofore necessarily performed by them both for and on behalf of said Receiver and for and on behalf of themselves from and after March 18, 1954, to and including May 10, 1954, respectfully report and show as follows:

1. Petitioners incorporate herein by reference and reallege as if herein set forth in full each and every allegation contained in Paragraphs 1 and 2, and each of them, of their petition for allowance of

fees to attorneys for Receiver, filed herein on March 18, 1954.

2. Petitioners have necessarily performed additional legal services both for and on behalf of the Receiver and for and on behalf of themselves [202] from and after March 18, 1954, to and including May 10, 1954, in connection with the administration of the business and affairs of the former Richman Trust and in connection with the defense of the Receiver and his attorneys against the objections filed herein on or about April 6, 1954, by defendant Richman to the report and petitions of the Receiver and his attorneys for fees. One of the petitioners, namely, John Whyte, has devoted a total of 28.4 hours of attorneys' time to the performance of said additional legal services as shown on daily time sheets kept by attorneys in the offices of FitzPatrick & Whyte. Of this total of 28.4 hours of attorneys' time, approximately 8.7 hours are allocable to services performed in connection with the administration of the business and affairs of the former Richman Trust, approximately 11.7 hours are allocable to services performed in connection with the defense of the Receiver against the objections raised by defendant Richman to the Receiver's report and petition for allowance of a fee, and approximately 8 hours are allocable to services performed in connection with the defense of the attorneys for the Receiver against the objections raised by defendant Richman to the petition for allowance of fees to attorneys for the Receiver.

3. The nature of said additional legal services

which have been necessarily so performed by petitioners is likewise shown on said daily time sheets and is as follows:

Nature of Legal Services Performed

Date, 1954

March 18: Telephone call from Robert Dulley, insurance broker, re what to do about workmen's compensation insurance policies—Whyte referred him to Camusi. Proofreading final copy of petition of Receiver's attorneys for fees. Details incident to service and filing of Receiver's report and petition for fee and petition of Receiver's attorneys for fees. Letter to Camusi turning over certain papers to him and enclosing check from Brookshire properly endorsed by Hallberg. [203]

March 24: Details incident to service and filing notice of hearing on Receiver's report and petition for fee and petition for fees to his attorneys.

March 25: Telephone call from Air Pollution Control, Inc., re installation of equipment in incinerators at Oliver Cromwell and Canterbury. Telephone call from Enright re form of Receiver's report and petition for fee. Letter to Enright answering his letter to Whyte, dated March 24, 1954. Letter to Hallberg advising him of time of hearing on his report and petition for fee.

April 2: Telephone call from Camusi re his problems in consummating settlement with Richman and Enright—Camusi inquired what amount the Receiver would ask for as a fee.

April 7: Studying Richman's objections to report

and petitions of Receiver and his attorneys. Letter to Hallberg enclosing copy of said objections.

April 8: Telephone call to Mrs. Hallberg re Richman's objections to Receiver's report and petition for fee and arranging for meeting with Hallberg to discuss same.

April 10: Conference with Mr. and Mrs. Hallberg re Richman's objections to Receiver's report and petition for fee.

April 12: In court re scheduled hearing on Receiver's report and petition for fee and attorneys' petition for fees.

April 16: Received letter from Robert Dulley re insurance matters. Letter to Camusi requesting that he take care of this matter.

April 19: Telephone call from Robert Dulley re cancellation by Receiver of workmen's compensation [204] policies on the five apartment houses.

April 21: Conference at Whyte's office between Enright and Whyte during which latter exhibited to former his time slips and correspondence file in this action.

April 22: Whyte present at taking of depositions of Hallberg and himself in Enright's office. Conferences with Mr. and Mrs. Hallberg prior to and during course of depositions.

April 24: Whyte present at continuance of depositions of Hallberg and himself in Enright's office. Conference with Hallberg prior to resumption of taking of said depositions.

April 27: Letter to Hallberg transmitting his

black memorandum book which was returned by the deposition reporter.

April 30: Telephone call from Camusi inquiring about taking of depositions and discussion of how to handle refund from insurance company amounting to approximately \$4,000.

May 1: Whyte read original of his deposition and corrected his answers wherever necessary — also noted corrections on copy of deposition.

May 3: Letter to Hallberg re his deposition. Conference with Hubert Laugharn of the Los Angeles Bar re his appearance as an expert witness on behalf of FitzPatrick & Whyte as to the reasonable value of their services as the Receiver's attorneys.

May 5: Drafting and dictating supplemental petition for fees to attorneys for Receiver. Conference with Mr. and Mrs. Hallberg re Receiver's defense to Richman's objections to Receiver's report and petition for a fee. [205]

May 6: Drafting, dictating, and revising supplemental petition for allowance of fees to attorneys for Receiver. Telephone call to Mr. Bleacher of Air Pollution Control, Inc. seeking information re history of installation of incinerator equipment at Oliver Cromwell. Delivering pleadings to Hubert Laugharn for his study as an expert witness re reasonable value of services rendered by attorneys for Receiver.

May 7: Efforts to line up expert witnesses as to reasonable value of Receiver's services in managing the five apartment houses belonging to the former Richman Trust. Research re attorney's right to com-

pensation for defending a receiver against charges that he has performed his duties improperly. Filing depositions of Hallberg and Whyte.

May 10: Telephone call to Hubert Laugharn re his testimony as an expert witness as to reasonable value of our attorneys' fees. Dictating portion of draft of supplemental petition for allowance of fees to attorneys for Receiver. Telephone call to Jefferson Mann re his employment as an expert witness as to the reasonable value of Hallberg's services. Telephone call to Mrs. Hallberg re continuance of hearing to May 12, and evidence to be presented at that time.

4. Petitioners desire to call the Court's attention to the fact that certain of the additional legal services hereinabove referred to are in the nature of extraordinary, rather than ordinary, services. Into this category would fall the services rendered in connection with defending the Receiver and his attorneys against the objections filed herein by defendant Richman to the report and petitions of the Receiver and his attorneys for fees.

5. Petitioners allege that the reasonable value of their ordinary legal services as in Paragraph 3 above set forth, exclusive of the extraordinary [206] services hereinabove mentioned in Paragraph 4, is the sum of \$250.00. Petitioners do not wish to indicate any figure as representing the reasonable value of said extraordinary services, but prefer that this Court should determine in its discretion what additional amount should be awarded to peti-

tioners for the performance of said extraordinary legal services.

Wherefore, petitioners pray as set forth in their original petition for allowance of fees to attorneys for Receiver, filed herein on March 18, 1954, except that they pray that the order referred to in the prayer of said original petition fix and allow the further sum of \$250.00 as a reasonable attorneys' fee to FitzPatrick & Whyte and John Whyte, as attorneys for the Receiver herein, for the ordinary legal services heretofore necessarily performed by them in connection with the administration of the business and affairs of the former Richman Trust from and after March 18, 1954, to and including May 10, 1954; and that said order include such further sum as this Court may in its discretion determine to be a reasonable attorneys' fee for the extraordinary legal services necessarily performed by them in defending the Receiver and his attorneys against the objections filed herein on or about April 6, 1954, by defendant Richman to the report and petitions of the Receiver and his attorneys for fees.

Dated: May 11, 1954.

FITZPATRICK & WHYTE
JOHN WHYTE

/s/ By JOHN WHYTE,

Petitioners.

[207]

Duly Verified.

[208]

Acknowledgment of Service attached.

[209]

[Endorsed]: Filed May 12, 1954.

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES OF PLAINTIFF, LYDA TIDWELL, REGARDING PRE-TRIAL HEARING ON DISTRIBUTION OF FUNDS REMAINING UNDER CONTROL OF COURT

I.

Court has jurisdiction to settle accounts, declare rights of plaintiff and defendant Richman to fund remaining in Receiver's hands and to order disposition in accordance therewith.

Defendant Richman claims on Page 11 of his Objections to the Receiver's Report that he and Plaintiff Lyda Tidwell are entitled to apply to a Court of competent jurisdiction to initially and originally determine their respective rights to the funds remaining in the hands of the Receiver.

This proposition is incorrect. This Court has jurisdiction of the fund and jurisdiction to decide what persons are entitled to distribution of the fund, and in what amounts.

In *Pacific Bank vs. Madera Fruit, Etc. Co.*, 124 Cal. 525, plaintiff dismissed suit after a Receiver had been appointed and after the receiver had taken possession of certain assets. Thereafter the receiver filed his account and petition and asked the court to "settle the same, fix his [221] compensation, et cetera." Plaintiff then filed a motion to dismiss the account and petition on the ground that the court had lost jurisdiction. However, the motion was over-

ruled and this ruling was affirmed on appeal. The decision of the court notes that not only does the court retain jurisdiction to settle the receiver's account, but it also retains jurisdiction to dispose of the funds in the receiver's possession, saying, the receiver,

“* * * is still amendable to the court as its officer until he has complied with its directions as to the disposal of the funds which he has received during the course of his receivership.”

The Pacific Bank case also states, at Page 527, “* * * If the court below lost jurisdiction of the case by virtue of the dismissal so that it could not settle the accounts of the receiver, nor make any disposition of the funds in his hands, how would the account be settled or the funds disposed of? The money on hand and collected by the receiver is in contemplation of law in the hands of the court to be disposed of as the law directs.” (Emphasis ours),

And,

“If the court in which the receiver was appointed cannot, after the dismissal of the case, settle and adjust the accounts of the receiver, to what jurisdiction will *be* resort? The dismissal of the case was the end of it as between the parties, but we think the court still retained the power to settle the accounts of its receiver and to direct the application of the funds in his hands.” (P. 527) (Emphasis ours.)

It is clear that the receiver is holding funds for disposal at the direction of the court. In *Garniss*

vs. Superior Court, 88 Cal. 413, 417, the court stated, quoting from Beach on Receivers, sec. 249,

“Though a receiver may be, and generally is, appointed upon the application of one of the parties interested in the property which he is to preserve, his holding is not merely for the benefit of such party, or of any other party; it is the holding of the court for the equal benefit of all persons who may be finally adjudged by the court to have rights in it;”’ (Emphasis ours.)

In State vs. Gibson, 21 Ark. 140, the court, referring to jurisdiction over a receiver after dismissal of the case, said,

“He was an officer of the court and subject to its orders in relation to the partnership effects placed in his hands as receiver until discharged by the court.”

To same effect, see Ireland vs. Nichols, 40 How. Pr. 85; Whiteside vs. Pendergast, 2 Barb. Ch. 471.

II.

Dispute between Plaintiff and Defendant, Frederick I. Richman, over funds remaining under control of court after payment of fees to Receiver and Receiver's attorney.

As this Court has been advised, plaintiff purchased all the right, title and interest of defendant in and to the assets known as the Richman Trust. The specific offer made by the defendant to plaintiff, which offer has been set out in the Objections of both plaintiff and defendant to the petition of

the Receiver for approval of his account, makes provision for the sale of the properties to the plaintiff and then, subject to certain terms and conditions, any moneys remaining in the hands of the Receiver are to be divided equally. In other words, if there were no dispute between plaintiff and defendant at this time, the Court would divide equally between them the funds remaining under the control of the Court after the deduction therefrom of fees to be paid to the Receiver and his attorneys. However, a dispute has arisen between plaintiff and defendant as to the meaning and interpretation of the written offer made by defendant. Hereinbelow will be set out the claims in dispute, and the law pertaining thereto. [223]

1. Plaintiff was forced to pay out of her own funds the real property taxes on the five apartment houses in the Trust for the period January 1, 1954 through June 3, 1954, in the amount of \$14,858.31. Plaintiff claims that taxes for the months of January and February, 1954, should have been borne equally by plaintiff and defendant. The taxes pro-rated for these two months amount to \$4,952.77.

The offer of defendant provides in paragraph 4 thereof as follows:

“4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 on or until the re-appointment of a receiver as might occur under 7(c) hereof.”

Paragraph 5 of said offer provides as follows:

"5. The receiver shall file his report and after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman."

A reading of paragraphs 4 and 5 above demonstrates without question that Mrs. Tidwell was to assume all obligations beginning March 1, 1954, but that all "operating obligations" of the Richman Trust for the months of January and February, 1954, were to be borne equally by the parties. While there seems to be no question as to the meaning of the above stated paragraphs in defendant's offer, still if there be any ambiguity, it must be resolved against defendant since he was the one who made the offer. Williston on Contracts, Revised Edition, Volume 1, Section 37, Page 100, states as follows:

"* * * (a) Ambiguous words in an obligation should be interpreted most strongly against the party who used them."

And again in Volume 3 of Williston, *supra*, Section 621, Page 1788:

"Since one who speaks or writes, can by exactness of expression more exactly prevent mistakes in meaning, then one with whom [224] he is dealing, doubts arising from ambiguity of language are resolved in favor of the latter;"

See Restatement of Contracts, Section 236(d). Also in accord, *Preston vs. Herminghaus*, 211 Cal. 1; *Couture vs. Ocean Park Bk*, 205 Cal. 338.

It has been held that operating obligations or expenses include taxes. See *Schmidt vs. Louisville C.&L. Ry. Co.*, 84 S.W. 314, 315, 119 Ky. 287; *Michigan Public Utilities Com. vs. Michigan State Telephone Co.*, 200 N.W. 749, 751, 228 Mich. 658; *Fleischer vs. Pelton Steel Co.*, 198 N.W. 444, 447, 183 Wis. 151.

2. Mrs. Tidwell paid from her separate funds water, gas, telephone and electric bills for a portion of February, 1954, in the sum of \$1,877.50. Since there is no question but that such utility bills are operating obligations, plaintiff contends that this said amount should be equally borne by the parties.

3. Two catalytic units were ordered by defendant Richman during his tenure as agent for the Trust for two of the apartment houses. These were installed during the administration of Mr. Richman and the receiver. Mr. Richman signed a contract to pay \$1,329.40 for each of the units, or a total of \$2,658.80. These catalytic units were ordered because of a dispute with the Air Pollution Control District, or some such similar agency, and constituted an operating obligation of the Trust prior to March 1, 1954. Here again plaintiff contends that defendant should share equally in this cost.

4. Defendant Richman claims that the Receiver had collected certain rents between February 25th and February 28th, 1954 which should have been retained by him so that defendant Richman would share in the same to the extent of one-half thereof. Instead, these moneys were paid over to Lyda Tid-

well. Some of these moneys collected by the Receiver represented February, 1954, rents, and some represented March, 1954, rents. However plaintiff Lyda Tidwell contends that \$4,499.29 worth of March, 1954, rents were collected by the Receiver and retained by him. Plaintiff Tidwell contends that she is entitled to all of the March, 1954, rents, even though collected in February.

Here again an interpretation of paragraphs 4 and 5 of the offer [225] as above quoted should be interpreted to mean that all obligations existing up to February 28, 1954 and all income for that same period belongs to the parties jointly, but that all obligations from March 1, 1954, must be assumed by plaintiff Tidwell, and it therefore follows that she is likewise entitled to all receipts for March, 1954, and subsequent months.

5. Pursuant to the written offer of defendant Richman above referred to and the unqualified acceptance of said offer by the plaintiff Lyda Tidwell, the parties entered into an escrow at California Bank and the escrow stated that internal revenue stamps in the amount of \$577.50 and seller's escrow fees in the amount of \$329.00, or a total of \$906.50, were to be borne by the buyer, Mrs. Tidwell. However, the escrow also stated "These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me (Lyda Tidwell) and with which agreement California Bank is not to be concerned."

It very often happens that parties may enter into

an involved agreement of purchase and sale and then go into escrow and file escrow instructions. If the escrow instructions are inconsistent with the prior written agreement, the question arises as to which is to control. This is a question of interpretation and the prior agreement and the escrow instructions must be read together. If the escrow instructions specifically state that the prior agreement is the controlling one then, of course, the prior agreement controls and not the escrow instructions. In *King vs. Stanley*, 32 Cal. (2d) 584, on hearing after 189 Pac. (2d) 46, the court stated that escrow instructions which are mere customary and expected directions to the escrow company do not take the place of the prior written agreement but merely carry it into effect.

In *Pigg vs. Kelley*, 92 Cal. App. 329, it was held that where a written agreement of sale and escrow instructions connected therewith show by their terms that they refer to the same sale, the two instruments must be construed together under Civil Code 1642 to ascertain the whole contract between the parties.

In *Womble vs. Wilbur*, 3 Cal. App. 527, it was held that where parties entered into a written agreement and in pursuance thereof entered into [226] an escrow whereby certain instructions were given to the escrow company, it is a question of interpretation of contracts and the surrounding circumstances as to whether the former agreement or the escrow instructions controlled, in case of any inconsistency. The court points out that the parties

can agree that the previous written agreement is not to be superseded by any escrow instructions.

Of course, an interpretation of the written offer of Frederick Richman shows without question that since he was selling his interest in the assets of the Richman Trust, he naturally is obligated to pay the regular seller's fees such as revenue stamps and seller's escrow fees. There is no reason why the defendant should not therefore pay the said fees which were paid by plaintiff out of her own funds in escrow.

6. Defendant Richman claims that the Receiver should not have turned over to the plaintiff the petty cash fund of \$785.00 thereby the defendant would seek to obtain one-half of that amount. However, defendant's offer shows clearly that he was not selling five apartment houses but rather all of his right, title and interest in and to the assets of the former Richman Trust. There is no doubt that the petty cash fund existing in a business or a trust is an asset of that business or trust and therefore Lyda Tidwell is entitled to the full amount of the petty cash fund as the purchaser.

7. Defendant Richman also claims that he is entitled to the payment of his agent's fees for the month of November, 1953, in the amount of \$3,-104.33. There is absolutely no merit whatsoever in this contention. It should be borne in mind that the Trust was terminated by order of court and a judgment of termination of said Trust was entered. The Trust was terminated by reason of undue influence and fraud in the execution of the Trust and the

effect of the judgment was to wipe out the Trust from the beginning as a void trust. In that stage of the legal proceedings of the above entitled case plaintiff had a claim against defendant Richman for excessive fees which the defendant had charged over a period of almost eight years. The defendant had a substantial claim in the approximate amount of \$50,000.00 which, by virtue of the agreement entered into by the parties for settlement, was surrendered, and both parties under [227] paragraph 1 of the offer were required to mutually release each other of any and all claims, known or unknown, that they might have against the other from the beginning of the world to the time of entering into the agreement. Since the Trust no longer existed the only claim which Frederick Richman might have against the plaintiff personally was for services rendered her in the administration of her property. This claim he surrendered by executing a release in her favor. It is true that paragraph 5 provides for the "payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, * * *" However, a reading of the complete contract would demonstrate forcibly that no obligation to defendant Richman was to remain outstanding, and if there be any inconsistencies in this offer, the inconsistencies must be resolved against defendant.

8. Defendant Richman claims that the Receiver paid the March, 1954, mortgage payment on the Oliver Cromwell trust deed in the sum of \$2,027.25.

If that be true that payment should have been made by plaintiff Tidwell from her own funds and defendant Richman would be entitled to a credit of one-half that amount. It is respectfully suggested that the parties attempt to stipulate as to as many of the facts as possible in the pre-trial hearing so that the trial itself will be reduced to an argument of law rather than a trial of facts coupled with an argument of law.

Respectfully submitted,

MARTIN, HAHN & CAMUSI,

/s/ By WILLIAM P. CAMUSI,

Attorneys for Plaintiff, Lyda
Tidwell.

[228]

[Endorsed]: Filed June 16, 1954.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: June 21, 1954, at Los Angeles, Calif.

Present: Hon. Ernest A. Tolin, District Judge;
Deputy Clerk: Wm. A. White; Reporter: Virginia Wright;
Counsel for Plaintiff: Robert Powsner;
Counsel for Defendants: Joseph Enright.

Proceedings: For pretrial hearing re division of moneys held by Receiver. (In Chambers.)

Counsel for plaintiff and defendants state claims to be determined upon division of moneys held by Receiver.

It is Ordered that counsel file stipulation as to those items agreed upon and that if stipulation cannot be reached, Court will hear oral argument.

Court will receive stipulation or hear oral argument on July 6, 1954, 10 a.m.

Filed eight exhibits for defendants.

Defts.' Ex. A to H incl. are received into evidence.

EDMUND L. SMITH, Clerk,

/s/ By WM. A. WHITE, Deputy Clerk. [229]

[Title of District Court and Cause.]

MEMORANDUM TO COUNSEL RE DISPOSITION OF FUNDS REMAINING UNDER CONTROL OF COURT AND ALLOWANCE OF FEES

The problems remaining before the Court are those arising from settlement of the Receiver's First and Final Report and Account, the Objections thereto, the various items to be considered in payment of the Receiver, and distribution of the monies remaining under control of the Court. General releases have been executed by the parties, Plaintiff's release running to Defendant and certain other persons, and Defendant's release running to Plaintiff. The Richman Trust has not been released and must discharge its obligations. Neither has the Receiver been released.

Defendant has asserted that he is entitled to \$3,104.33 remaining unpaid for services rendered

by him under the Trust indenture. The Court has found that the [230] Trust was procured by undue influence and has allowed Plaintiff to exercise her privilege of voiding it although it was not void ab initio but voidable only. As it has been voided, Defendant is not entitled to management fees as fixed in the contract by which the Trust was established because that contract has been set aside and the measure by which Defendant's fees were determined during the life thereof is no longer applicable. He is entitled to compensation from the Trust estate upon a quantum meruit basis. The \$3,104.33 asked is based upon a charge of ten per cent of gross income of the Trust during a particular period of time. There was evidence that five per cent was a proper property management fee during the time involved. Other evidence placed the reasonable value of such services somewhat higher. The Court believes that six per cent of the income is a proper quantum meruit allowance under all the circumstances of this case although if the case were one of fixing fees for a long rather than a short term, five per cent would have been indicated. The Court does now find that the fees for the period in question shall be allowed at the rate of six per cent of the gross income of the Trust during the period in question instead of at the rate specified in the agreement which has been set aside.

Plaintiff has stipulated in the Escrow Instructions that all of the seller's costs and expenses of escrow, revenue stamps and recording, be at her expense. She cannot now avoid that written under-

standing by claiming inferences from an agreement that do not clearly flow from that written agreement. In preparation of the order hereon, counsel will recognize that it was the obligation of Mrs. Tidwell to pay for the revenue stamps and the seller's escrow fee. [231]

It appears that Plaintiff has paid \$1,877.50 from her own fund in discharge of utility bills for water, gas and electricity provided to the properties of the former Trust during the time that such properties were being managed by the Receiver. In ordinary course, these bills would have been paid by the Receiver as they were incurred by him. Plaintiff is entitled to recover \$1,877.50 from the funds on hand as reimbursement of this item.

It appears that the various rents collected belong to Plaintiff because they were rentals which were being paid in advance for occupancy during the term of her ownership of the properties. Even had there been proof of collection by Mrs. Tidwell or her agent of some past due rent originally payable to the Trust or its Receiver, still any such rent would have become payable to her upon the making of the agreement because she bought all of Defendant's interest in the assets of that Trust. The Court finds that the agreement memorialized by Joseph T. Enright's letter to Laurence B. Martin, dated February 19, 1954, as adopted in writing by Frederick I. Richman and Laurence B. Martin's letter of February 25, 1954, and as adopted in writing by Mrs. Tidwell, contemplated and agreed that what should be acquired by the purchaser would be “* * * Mr. Richman's undivided half interest in

the assets of Richman Trust* * *". If Mrs. Tidwell has collected monies which were assets of the Richman Trust, then she has received no more than what she purchased. If she has received rents which were not due the Richman Trust, it must follow that these are rents which are due her. She is entitled to have the funds now under control of the Court divided without charging her for what she has received in this regard. [232]

Before the Receiver was appointed, Defendant commenced negotiations for the purchase of certain air pollution control equipment referred to as catalytic units for installation in the Canterbury and Oliver Cromwell properties. The question is now presented as to who should pay for these units. They were acquired by the Receiver during the period of his receivership but in doing so, he merely carried out a plan which had been put in motion by Defendant. These units were assets of the Trust which, under the terms of the letter agreement, were sold to Plaintiff. The obligation to pay is the obligation of the Receiver as the Receiver incurred the expense during the administration of his Trust and Plaintiff was not a party to the purchase.

The petty cash fund is an asset of the Richman Trust. Mrs. Tidwell has purchased all of Defendant Richman's interest in that Trust and that includes the petty cash fund which existed simply as an operating incident of each individual apartment house so that the resident managers would have available small sums of money for the purposes that

are common to the day-to-day business transacted by resident apartment house managers.

The Court finds that real property taxes were an operating obligation of the Trust. Whereas Mrs. Tidwell was to assume (and did assume) the operating expenses of the Trust after a tax item in the sum of \$4,952.77 had accrued, even though the billing date had not arrived, it is proper that she be reimbursed what she has paid out of her own funds in payment of an operating expense which had arisen before she acquired her fee simple title and assumed by express agreement the operating expenses as of a date after the time period in question. [233]

The March 1st installment upon a note, secured by a deed of trust, which was paid on February 27th, was paid for the benefit of the Plaintiff. Although at the time the Receiver paid it, he had every reason to believe it would be a Receiver's obligation on the due date, and insofar as the Receiver's conduct is concerned, it was not unwise to pay a definite obligation three days in advance of its due date, equity will require that it be charged to the person for whose benefit it now appears the payment was made (a circumstance not foreseeable on February 27th). On that day it appeared the Receiver would remain in possession. He did not, and on the day the payment fell due Mrs. Tidwell was in charge and the benefit of the payment was hers.

The Receiver has not prayed for a specific sum in compensation for his services but has set forth

in detail what his services consisted of and prays for reasonable fees. The Court bears in mind that Defendant has testified that ten per cent of the gross income was a reasonable management fee when Defendant rendered the management service. In procuring the contract with Plaintiff for that fee, there was an over-reaching and undue influence. That fee was excessive. The Court bears in mind, also, that there is evidence in the record that various percentages including five per cent and six per cent would be a reasonable management fee. The Receiver in this instance acted as a property manager with the obligations of full trustee and of an officer of the Court. Mr. Richman, with whom he had to deal, is a person given to hostile and aggressive attitudes. It is evident that he exercised these in his relations with the Receiver. The Receiver was obliged to go through the problem of setting up his own management plan. [234] He was only allowed to execute the plan for a brief period before the receivership was abruptly terminated. He was placed in possession hurriedly and he was terminated abruptly. It then became necessary for him to file an accounting, and the accounting procedure was exhausted to its ultimate in searching into the conduct of the Receiver during and even before his stewardship. He spent several days in Court defending the administration of his trust and undergoing a most critical and insulting scrutiny of his every act and omission in his administration. The Receiver's fee is fixed in the sum of \$6,000.00, that being the reasonable value of his services, with some

consideration given to the greater than usual vexation which was visited upon him and the labors of making up his accounting and explaining and defending it in Court. The Court finds it to be a true and correct account.

The Receiver had the services of an attorney who was employed with the approval of the Court. Except for attendance at and participation in Court proceedings on the Receiver's account, the services were of a routine character. The total sum of attorney fees allowed is \$1,000.00, this to include all ordinary and extraordinary services for which fees have been prayed. It is noted that the total of Receiver's and attorney fees is approximately \$2,500.00 less than the fees which would have been enjoyed by Defendant while handling a like sum of money while he was in charge, and he also had a right to incur legal expenses for which he could be compensated over and above the fixed percentage. Further, the Court's Receiver was in charge for a three-month period whereas Defendant had adroitly, and by over-weaning and deceptive means, obtained a contract for a lifetime. [235]

Counsel for Plaintiff will prepare an order for settlement under Rule 7.

Dated: This 5th day of October, 1954.

/s/ ERNEST A. TOLIN,

United States District Judge. [236]

[Endorsed]: Filed October 5, 1954.

[Title of District Court and Cause.]

MEMORANDUM TO COUNSEL

Whereas John Whyte, Attorney for Roy E. Hallberg, the Receiver herein, has protested to the Court that the award of fees to the Attorney for the Receiver was inadequate, and the Court has thereafter summoned all parties and counsel before it and heard further argument and fully re-considered the matter of fixing attorney fees for the Attorney for the Receiver:

The Court does now direct that when the attorney for plaintiff prepares and submits an order upon settlement of the Receiver's account, that such order shall provide that the fees for John Whyte as Attorney for Roy E. Hallberg, Receiver herein, be fixed at the sum of One Thousand Eight [237] Hundred Dollars (\$1,800.00), and that the Receiver be authorized and directed to issue his check to said John Whyte for that sum.

Dated: October 22, 1954.

/s/ ERNEST A. TOLIN,

United States District Judge. [238]

[Endorsed]: Filed October 22, 1954.

In the United States District Court, Southern District of California, Central Division

No. 13,742-T

LYDA TIDWELL, et al., Plaintiffs,

vs.

FREDERICK I. RICHMAN, etc. et al.,
Defendants.

ORDER IN RE SETTLEMENT OF RECEIVER'S ACCOUNT, Fees and Distribution of Funds in Hands of Receiver. (Under Local Rules 7 of the U.S. District Court for the Southern District of California.)

This matter having come on for final hearing on the 27th day of September, 1954, on the First and Final Report and Account of the Receiver, Petition for Receiver's Fees and Petition for Receiver's Attorney's Fees and distribution of the balance remaining in the receiver's hands after payment of his fees and those of his attorney, plaintiff appearing by her attorneys, Martin, Hahn & Camusi, by William P. Camusi, defendant Frederick I. Richman appearing by his attorneys, Brady, Nossaman & Paulson and Joseph T. Enright, by Joseph T. Enright, and the receiver Roy E. Hallberg having appeared through his attorney, John Whyte, and oral and documentary evidence having been previously submitted to the court, and good cause appearing therefor, the court now makes its findings and order therein:

-- I.

This Order arises as the result of the final settlement of a suit in this court to cancel an intervivos trust and for other relief, brought by [243] plaintiff, Lyda Tidwell, against defendant, Frederick I. Richman, and others, United States District Court file No. 13,742-T. After trial of said matter on the claim of fraud and undue influence in the inception of the trust, this court gave judgment in favor of plaintiff and against defendant, and ordered that said trust be cancelled and dissolved, and this court appointed Roy E. Hallberg as receiver on December 1, 1953, to operate and conserve the assets of said trust pending a final determination of the matter by way of final judgment or settlement between the parties. The court approved the employment by the receiver of an attorney, John Whyte, to render legal services to said receiver in connection with the administration of said trust.

II.

On February 26, 1954, pursuant to stipulation of the parties, the court ordered that the receiver be relieved of his active duties of management, control and possession of the trust assets as of 5:00 o'clock p.m., Sunday, February 28, 1954, and that he give over control and possession to plaintiff, Lyda Tidwell, of all the assets of the said trust excepting money in bank and under the control of the said receiver.

The said Order of this court, dated February 26, 1954, was made because the plaintiff and defendant

had arrived at an agreement for settlement of the entire action. The settlement of the entire action between plaintiff and defendant Richman arose out of an offer made by defendant Richman to plaintiff by letter dated February 19, 1954, and as a result of said offer, plaintiff purchased all of defendant Richman's right, title and interest in and to the assets of said trust.

III.

Pursuant to stipulation, plaintiff took over possession of the assets of the trust, with the exception of money in bank and under the control of the receiver, at 5:00 o'clock p.m., February 28, 1954. In pursuance of the settlement of the action as above described, dismissal of the action was entered, this court, however, retaining jurisdiction of the cause for the purpose of settling the accounts of the receiver, fixing the fees of the receiver and his attorney, and disposing of any balance of the funds remaining [244] in the hands of the receiver after making provision for the payment of all the receiver's operating expenses and the fees of the receiver and his attorney.

IV.

The first and final report of the receiver and petition for allowance of fee to receiver, together with petition for allowance of fees to the attorney for the receiver, were filed. After allowance for receiver's fees and fees for his attorney, plaintiff and defendant are each entitled to one-half of the funds remaining in the hands of the receiver. However, both plaintiff and defendant Richman make addi-

tional claims against said funds remaining because of certain charges which the receiver paid, or failed to pay. On or about February 28, 1954, the receiver paid the March installment due on the trust's promissory note secured by a trust deed on the Oliver Cromwell Apartment house in the sum of \$2,027.27. The receiver did not pay defendant Richman any fee for services rendered by said defendant as agent for the trust for the month of November, 1953, and defendant Richman has never been compensated for said services.

Also, the receiver, having turned over the assets and books and records of the trust on February 28, 1954, did not pay certain obligations incurred prior to, and during, his administration. The receiver failed to pay certain utility bills incurred during the month of February, 1954, in the sum of \$1,-877.50. The receiver also failed to pay any of the real property taxes on trust assets for the months of January and February, 1954, which taxes amount to the sum of \$4,952.77. The receiver further failed to pay for two catalytic units in the sum of \$1,300.00 each, or \$2,600.00 for both units, which catalytic units were contracted for by defendant Richman and installed on the apartment houses during the receiver's administration. Plaintiff was not a party to the purchase of the catalytic units. Plaintiff paid the bills for utilities, taxes, and for the catalytic units from her own funds.

The first and final report of the receiver is found to be full and correct.

Now, therefore, it is hereby ordered, adjudged

and [245] decreed that the said report as filed by the receiver is a true and correct account and the court finds that the receiver has in his possession, after deducting the credits to which he is entitled, a balance of \$20,697.71, consisting entirely of cash, and said account and report is approved, allowed and settled as rendered; that said receiver, Roy E. Hallberg, is hereby discharged from further duties and responsibilities as receiver herein and his bond exonerated; the reasonable value of the services of Roy E. Hallberg as receiver is the sum of \$6,000.00, which the Court finds to be the reasonable value of said services, and his fees are hereby fixed at the sum of \$6,000.00; the reasonable value of the services of John Whyte, as attorney for the receiver in this matter, is the sum of \$1,800.00, and his fees are hereby fixed at the sum of \$1,800.00, which the Court finds to be the reasonable value thereof.

There remains on hand after allowance for payment of receiver's fees and the fees of his attorney, the sum of \$12,897.71 which sum is payable to plaintiff and defendant Richman as their interests appear.

It is further ordered, adjudged and decreed that from the balance of funds remaining in the hands of the receiver in the sum of \$12,897.71, defendant Richman is entitled to the following credits: A reasonable fee for services rendered by him as agent for the dissolved trust, which fee is fixed at six per cent (6%) of the gross revenues for the month of November, 1953, which revenues aggregated \$31,043.33, or a fee of \$1,862.60, one-half of which was

the obligation of plaintiff; and defendant Richman is entitled to a credit of one-half of said mortgage payment made for the month of March, 1954, said one-half amounting to \$1,013.64, or a sum total of credits of \$1,944.94.

It is further ordered, adjudged and decreed that from the balance of the funds remaining in the hands of the receiver in the sum of \$12,897.71, plaintiff, Lyda Tidwell, is entitled to the following credits: One-half of the said utility bills paid by her, said one-half amounting to \$938.75; one-half of the said taxes paid by her, said one-half amounting to \$2,476.38; one-half of the cost of the catalytic units paid by her, said one-half amounting to \$1,300.00, or a sum total of credits of \$4,715.13. [246]

It is further ordered that the receiver reimburse himself from the monies in his possession to the extent of \$89.20, paid out by him for copies of the depositions used on the hearing herein.

It is further ordered, adjudged and decreed that the balance of said fund remaining, in the amount of \$6,237.64, after allowance for receiver's fees, attorneys' fees and said credits to both plaintiff and defendant Richman, be divided equally between plaintiff and defendant Richman in the amount of \$3,118.82 each. Plaintiff is entitled to receive from said fund the total sum of \$7,833.95, and defendant Richman is entitled to receive from said fund the total sum of \$4,974.56.

It is further ordered, adjudged and decreed that plaintiff is not entitled to any credits for expenses

incurred by her in said escrow on behalf of defendant Richman as the seller therein.

It is further ordered, adjudged and decreed that defendant Richman is not entitled to any credits for any rents collected by plaintiff, nor is defendant Richman entitled to any credit for the said petty cash fund paid over to plaintiff.

It is finally ordered that neither plaintiff nor defendant Richman is entitled to any credit against said fund except for those specifically hereinabove granted.

The receiver is ordered to disburse the funds in his hands in accordance herewith, except as this Court or the Appellate Court may award costs or fees to the receiver and his attorney in connection with any appeal.

Dated this 19th day of November, 1954.

/s/ ERNEST A. TOLIN,

Judge.

[247]

Affidavit of Service by Mail attached.

[248]

[Endorsed]: Filed and entered Nov. 19, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that defendant, Frederick I. Richman, hereby appeals to the Ninth Court of

Appeals from the Order and Judgment In Re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver, docketed and entered the 19th day of November, 1954.

Dated: December 15, 1954.

BRADY, NOSSAMAN & PAULSTON
and

JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT, [249]

Acknowledgment of Service by Mail attached.

[Endorsed]: Filed December 15, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that plaintiff, Lyda Tidwell, hereby appeals to the Ninth Circuit Court of Appeals from that portion of the Order In Re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver, docketed and entered the 19th day of November, 1954, which awards the sum of \$4,974.56, or any part thereof, to defendant, Frederick I. Richman, and which limits the distribution to plaintiff, Lyda Tidwell, to the sum of \$7,833.95. Plaintiff does not appeal from that portion of the judgment awarding reasonable fees for services rendered by the Receiver and the Receiver's attorney.

Dated: December 17, 1954.

MARTIN, HAHN & CAMUSI

/s/ By WILLIAM P. CAMUSI,
Attorneys for plaintiff and
Appellant, Lyda Tidwell. [252]

Affidavit of Service by Mail attached. [253]

[Endorsed]: Filed December 20, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund I. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 261 inclusive, contain the original

Memorandum of Decision;

Order Appointing Receiver;

Ex Parte Motion for Order Staying Proceedings;

Oath of Receiver;

Bond of Receiver;

Notice of Motions re Appointment of a Distributing Receiver;

Petition for Authority to Employ Counsel;

Order Authorizing Receiver to Employ Counsel;

Affidavit of Service by Mail of Order Authorizing Receiver to Employ Counsel;

Petition for Authority to Pay Christmas Bonuses;

Order Authorizing Receiver to Pay Christmas Bonuses;

Affidavit of Service of Order Appointing Receiver;

Petition for Authority to Renovate Individual Apartments, etc.;

Consent to Petition for Authority to Renovate Individual Apartments, etc.;

Answer to Petition of Receiver for Authority to Renovate and Consent of Plaintiff;

Judgment for Revocation and Avoidance of Trust, and Appointment of Receiver;

Order Extending Time Within Which Receiver Must File His First Report and Petition for Instructions, and Supporting Affidavit;

Notice of Application and Motion for Permanent Receiver;

Statement of Reasons and Points and Authorities in Support of Application and Motion for Permanent Receiver;

Stipulation filed Feb. 26, 1954;

Order filed Feb. 26, 1954;

Petition for Allowance of Fees to Attorneys for Receiver;

First and Final Report of Receiver and Petition for Allowance of Fee to Receiver;

Notice of Hearing on (1) First and Final Report of Receiver, (2) Petition for Allowance of Fee to Receiver, and (3) Petition for Allowance of Fees to Attorneys for Receiver;

Affidavit of Service by Mail of Notice of Hearing;

Dismissal With Prejudice;

Objections and Answer to Report and Petitions of Receiver and his Attorney for Fees;

Objections to First and Final Report of Receiver;

Plaintiff's Reply to Objections of Defendant Frederick I. Richman;

Plaintiff Lyda Tidwell's Points and Authorities in Support of her Objections and her Reply to Defendant Richman's Objections;

Petition to Disqualify and Authorities;

Supplemental Petition for Allowance of Fees to Attorneys for Receiver;

Pre-trial Memo, Receiver's Fund;

Memorandum of Points and Authorities of Plaintiff, Lyda Tidwell, Regarding Pre-trial Hearing on Distribution of Funds Remaining Under Control of Court;

Memorandum to Counsel re Disposition of Funds Remaining Under Control of Court and Allowance of Fees;

Memorandum to Counsel;

Statement of Objections of Roy E. Hallberg, as Receiver, etc., to Plaintiff's Proposed Order in re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver;

Order in re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver;

Notice of Appeal to the Ninth Court of Appeals by Defendant;

Designation of Contents of Record on Appeal, by Defendant;

Notice of Appeal to the Ninth Circuit Court of Appeals, by Plaintiff;

Designation of Contents of Record on Appeal, by Plaintiff;

Appellee's Designation of Portions of Record, Proceedings, and Evidence to be Contained in Record on Appeal;

Petition for Extension of Time for Reporter Under Rule 73g and Order; and a full, true and correct copy of the Minutes of the Court on November 30, 1953; December 2, 3, 4, 1953; April 12, 1954; June 21, 1954; which, together with the original Defendant's Exhibits A-H inc. on the Pre-trial hearing June 21, 1954; and the original Receiver's Exhibits 1-4 inc., and Defendant's Exhibits A-L inc. on the hearing re payment of fees to the Receiver and his attorney; the Depositions of John Whyte and of Roy E. Hallberg, each taken April 22, 1954; and 17 volumes of Reporter's Transcripts of Proceedings had on Nov. 30, 1953; Dec. 1, 2, 3, 4, 1953; Jan. 15, 1954; April 12, 1954; May 12, 1954; May 13, 14, 17, 1954; June 7, 8, 18, 21, 1954; Sept. 27, 1954; Oct. 12, 1954; all in said cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid by appellants.

Witness my hand and the seal of said District Court, this 25th day of March, 1955.

[Seal] EDMUND L. SMITH,
 Clerk
 /s/ By THEODORE HOCKE,
 Chief Deputy

In the United States District Court for the Southern District of California, Central Division

No. 13,742-T—Civil

LYDA TIDWELL, etc., Plaintiff,
 vs.

FREDERICK I. RICHMAN, et al., Defendants.

TRANSCRIPT OF PROCEEDINGS

Los Angeles, Calif., Monday, Nov. 30, 1953

Honorable Ernest A. Tolin, Judge Presiding.

Appearances: For the Plaintiff: William P. Camusi, 530 West Sixth St., Suite 701, Los Angeles, Calif. For the Defendants: Joseph T. Enright, 541 South Spring St., Los Angeles 13, Calif. [1*]

(The following proceedings were had in chambers:)

The Court: Let's come on the record. Mr. Camusi is here for the plaintiff, and Mr. Enright for

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

the defendant. The court has filed a memorandum of decision in the case.

How many copies would you like, Mr. Enright?

Mr. Enright: If there could be two, I would appreciate it, but, if not, I can have copies made.

The Court: I will hand you two.

Mr. Camusi: Do you have two for me?

The Court: Yes. If anyone needs three, they can have three, because I asked Miss Leland to run off a number of copies.

Mr. Enright: I will take three. Mr. Nossaman will want one.

Mr. Camusi: And I could use another one, if you have it, Judge.

The Court: All right.

(The copies were handed to counsel.)

The Court: It has been, as you will note from that, and as the clerk probably has already told you, the court's conclusion that the plaintiff should prevail and that a receiver should be appointed. So we have called up the application for receivership which has been continued from time to time, acting [2] on it in chambers without there having been a renewal of the motion.

Receiverships are always complicated somewhat if they start in the middle of an accounting period of some sort, and while it isn't a provident case of management to wait until the beginning of a new calendar year, to begin a receivership on the first day of a calendar month sometimes simplifies the accounting problems and the difficulties which in-

here in making adjustments and prorations, and so forth.

Although this memorandum is almost 19 pages long, a great deal has not been stated, and some of it, due to the desire of the court to avoid a long period of submission, has not been elaborated upon to the extent that it was thought out by the court, because to articulate sometimes the thoughts which would be set forth in detail in a memorandum would take more time here than would be consistent with a short submission period.

Now, we called Mr. Camusi and asked him to draw a suggested order for the appointment of a receiver, and I will tell you tentatively what the court's idea was with respect to it.

I have on file here a great number of names of lawyers, some of them highly reputable and quite experienced in receivership matters, who have come in from time to time and suggested that they would like to have receivership appointments. [3] But it has seemed to me that it would probably be more in keeping with the requirements of this case to appoint someone not a lawyer, but who had a particular acquaintance with the problems which inhere in the management of income properties.

I have asked for the names of some such people from various bankers, not acquainting them, of course, with the particular case, and I have interviewed a number of them. I have also thought of people of whom I have known by reputation and slight acquaintance, who are not in the practice

of law, thinking that with Mr. Richman being an attorney, it would perhaps be well to avoid having a lawyer here who might have had either pleasant or adverse experience with him, and I have come to a tentative selection of a man named Mr. Roy E. Hallberg.

Mr. Hallberg was for some years associated with a property management operation in Chicago, and has considerable acquaintance and experience in that type of work. Since coming to California he has held various positions with different types of corporations, and has been engaged in the management of property for elderly relatives who have considerable apartment property in Southern California.

I called him and found that he is available, and I asked him to come in here at about 2:00 o'clock today, so that counsel could meet him. It was my intention to appoint him, [4] and inasmuch as the receiver ordinarily needs counsel, to suggest to him that he take legal counsel, not from any of the attorneys in this case, but that he select an attorney of his own choice, whom the court would approve if he selects any reputable member of the bar. He asked me if he could consult for his legal advice, except such as the receiver takes from the court, with an attorney who has until very recently been with O'Melveny & Myers, which I understand is the firm that has handled Mr. Hallberg's own legal work. I don't know which member of the staff of O'Melveny & Myers he has in mind, but I do understand that the man either has left or is about to

leave that firm for the purpose of setting up a private practice of his own.

Now, does anyone have an objection to Mr. Hallberg, or do you want to question him, or do you have an objection to his employment of counsel?

Mr. Camusi: Plaintiff's position, your Honor, is that we don't know Mr. Hallberg, but I gather your Honor has made quite an elaborate investigation, and it is our desire that there be some competent man unknown to either side or to counsel, and so with that statement, why, we are willing to go on the court's opinion of the man it has chosen.

The Court: I have known Mr. Hallberg in a rather offhand way for some time, but he is not a particular friend or even a close acquaintance, although his name has come up in [5] connection with the consideration of other names. I talked the other day to Mr. Paul W. Elmquist, who is the head of Paul W. Elmquist Company, and it turns out, I think, that he is about as well qualified as Mr. Hallberg, but he has had various associations here which might turn out to, as you say, ring a bell with him, and I had felt finally, after talking with these various people, that it would be better to have some one who, while knowing property management, had never engaged in it except as to his own and his immediate relatives' property in this locality.

I am hopeful the form of the order you have prepared will merely call on him to hold matters in status quo until the judgment, which I hope will be entered with as reasonable promptness as you

can get it ready, will be final, so that there will not be a liquidation of assets.

I had in mind, first, calling upon some of the professional receivers about town, and then it occurred to me that the usual professional receiver whom we know in this locality has ordinarily had as the objective of receivership the liquidation of an estate rather than the preservation of it and simple distribution, and I didn't want to have a person here who had in mind turning property into cash or changing the form of the corpus of the estate materially. I think it ought to be kept as nearly as possible in status quo until judgment becomes final. [6]

I would like to hear some comment from counsel as to what would be an appropriate bond.

Mr. Enright: The evidence shows the amount of moneys being received, gross moneys being received each month. The evidence further shows that the receipts had been expended each month in payment of operating expenses or reduction of Union Bank indebtedness. The evidence further shows that towards the end of the trial defendant presented testimony that there was an outstanding secured obligation upon one of the apartment houses, the name of which I recollect to be the Oliver Cromwell—if it isn't that one, it is some other one—

Mr. Camusi: That is correct.

Mr. Enright: —and that the defendant desired to apply the accumulating cash upon that indebtedness. The installments payable under the loan contract permitted of advance payments.

The evidence further showed that Internal Revenue's investigation had resulted in its objecting to the rates of depreciation theretofore taken by the trustees or the managing agent.

The sum total of this status of the evidence is that there will be no substantial amount of cash on hand from month to month, other than the monthly collections, and, therefore, it would seem to me that all parties should endeavor to avoid expense, and to fix the bond at an amount of [7] not exceeding one and one-half times monthly collections. Those being the only personal property, except a few notes receivable, and I can't call those from memory, it would seem to me that the bond should be commensurate with the amount—not the amount, but the value of the property that someone might, and we certainly do not conjecture someone might, appropriate. That is my thought as to the bond.

The Court: I had been thinking loosely in the way in which probate bonds are fixed, and that a bond should be sufficient to cover the value of the readily liquidatable assets, where it would not call for a title search, or something of that nature.

Mr. Enright: That is right.

The Court: So how much money would a person acting in this capacity have in his possession at any one time?

Mr. Enright: I don't see how it could exceed thirty-five to forty thousand dollars monthly in rental collections.

Mr. Camusi: That is what the gross rental col-

lections are. In probate practice I believe they take one year; they take a whole year of income. But that would be an awfully high bond in this case, and I agree with Mr. Enright. I don't think we should follow the probate rule in that respect.

Now, I don't know, but I was thinking of a bond somewhere between fifty and one hundred thousand dollars. Mr. Enright mentions one and a half times monthly rental collections. That [8] would be somewhere around fifty thousand.

The Court: Are all of these indebtednesses amortized so that there are monthly payments upon trust deeds?

Mr. Enright: There is only one that I know of.

Mr. Camusi: There is only one, and the payment on that is about \$5,000 a month.

Mr. Enright: That is my recollection, about \$5,000 a month.

The Court: I take it, then, you are thinking of a bond in terms of about \$50,000.

Mr. Camusi: I would say \$75,000 personally.

The Court: 75,000.

Mr. Camusi: With some kind of a provision that if moneys on hand exceed that amount, it might be increased upon order of the court, or something.

The Court: Yes.

Mr. Cleaver: Mr. Hallberg is here.

The Court: Have him come in.

(Thereupon Mr. Hallberg enters chambers, and is introduced to counsel, by the court.)

The Court: Just have a chair, Mr. Hallberg.

The court has now given its decision in the mat-

ter, which I discussed with you last week, and I have asked counsel if there is any objection—of course, the defendant feels no doubt that he should have won the case, but since a receiver [9] is to be appointed—whether they have any objection to you as the selection of the court as receiver.

Now, they haven't announced any objection, but they don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some years was in the management of real properties, sometimes in connection with court receiverships, and that your experience in it locally has been in the management of your own real properties, which were of income nature, and of similar properties owned by either you or your wife's relatives.

Mr. Hallberg: That is correct.

The Court: Now, if counsel wish to question Mr. Hallberg before the appointment is actually made, the clerk will swear him, and you may ask any questions you wish.

Mr. Enright: On behalf of the defendant, your Honor, I am in no position at this time to interrogate this gentleman. I am satisfied that your Honor would not have selected anyone except a man of not only integrity, but of ability. But my objection goes to the proposition of the appointment, your Honor, and I will seek, and now seek time to consider what steps are required under the procedural requirements of this court to bond against his appointment at this very day, or as soon as I assume the order can be drawn.

You see, your Honor, my basic position is that I do represent a member of the bar, and I do represent a person who, [10] I submit, under all the evidence has never taken one red cent from this trust, from the date of its execution and for years before in the operation of the joint venture.

Now, considering those circumstances, that is, a man who has a license, a professional license, and if he were to appropriate anything, why, his moral integrity would be involved, I do plead that this appointment be withheld for a few days, during which we can research the procedural aspects of an appointment; and, secondly, ascertain what expenses would be incurred if he were to bond against the appointment of a receiver, because it is my recollection under Rule 56—I believe it is 56—concerning appointment of receivers, that it is an appealable order, and I am sure the court appreciates that I, as trial attorney, cannot make these decisions without consultation with my senior, Mr. Nosaman, and with my client, also an attorney.

So I would seriously plead for a little time here in considering the court's decision, and considering the appointment. But never do I question the appointment upon the ground of the integrity of this man or qualifications, because I have no doubt that the court thoroughly investigated that aspect before even selecting Mr. Holmberg—is that it?

The Court: Hallberg.

Mr. Enright: So that is about all I could say at this time, your Honor. [11]

Concerning his obtaining legal advice, I might

state that to me personally, and so far as I can state on behalf of my client, his selection of an attorney from the O'Melveny & Myers firm sounds very good to me, because it is one of the finest law firms in the community.

The Court: What I understand he has in mind is the selection of an attorney who is about to leave them,——

Mr. Hallberg: He has just left.

The Court: ——for the purpose of forming his own legal practice. What is his name, Mr. Hallberg?

Mr. Hallberg: John Whyte. That is W-h-y-t-e.

The Court: Of course, an order appointing a receiver is an appealable order, but it cannot be appealed from until it is made.

Mr. Enright: Yes.

The Court: I think it is not appropriate for the defendant to remain longer in control as trustee, for several reasons which do not reflect upon whether or not he has been taking money from the trust. I don't understand that there is any charge that he has ever stolen anything. Of course, there is an action for an accounting based upon various grounds, which we need not enumerate here, which include, among other things, that he has allowed, I think, excess fees to himself. Is that not it?

Mr. Camusi: That is one of the grounds. [12]

The Court: Then, too, one of the matters which is treated in the memorandum that is today filed in the case in chief, is that the defendant is agent of a trust at a rather remunerative rate of com-

pensation, and since it has been determined that he was not entitled to enter into that, or, at least, that his entry into it was voidable at the option of the co-trustor, it would not appear just that he should continue to earn or receive the considerable emoluments which the contract provided for him during the extended period that elapses between judgment and appeal in cases of this character.

So I would like Mr. Hallberg to begin his duties as receiver upon his qualifying.

Now, if you can have an order for us, Mr. Camusi,—

Mr. Camusi: I will have it.

The Court: —we will either execute it, or make some revision in it.

Now, these gentlemen, Mr. Hallberg, have talked about bond. The bond that is commonly required of an executor or administrator under California law is one year's gross income from the property. The properties here would produce such a figure that one year's gross income would be quite considerable. It is rather contemplated that the beneficiaries under this trust will receive funds from time to time, and there are indebtednesses and regularly recurring expenses, which a receiver would have to administer, which will mean that he would [13] never have in his possession or under his control in the ordinary course of administration a whole year's income. So it has been suggested by the attorneys that a bond in the sum of \$75,000, in the usual and customary form as that given by receivers appointed in these courts be a proper bond

in this case, and the court will and does fix bond in that sum.

Do you have an order of appointment drawn, Mr. Camusi?

Mr. Camusi: It has been drawn, your Honor, and I hope to get it up here shortly this afternoon.

Mr. Enright: May it please the court,—

The Court: Yes.

Mr. Enright: —I haven't read the decision, the written decision filed this day, but may I make comment upon the statement just made by the court, that is, concerning the fees received by Mr. Richman, the defendant.

If that be the occasion for the appointment of a receiver, this day or within the next few days, then again I point out that the most he could do would be to pay himself, and I here offer to see that he does not pay himself the fees received under the contract, and that the moneys can be impounded until we have had opportunity to present the appealable aspects of the appointment of a receiver.

The Court: There are considerable comments in the record, and the court is going to appoint a receiver as soon as an [14] appropriate order is presented to the court.

Mr. Enright: I just want to make my position clear.

The Court: Yes. Now, if you gentlemen wish to consult with the receiver whom I have indicated will be appointed, we will provide one of the rooms adjacent to the chambers for such consultation, so that you may orient him to immediately pending

problems which you feel might enter into the employment he is about to assume.

I know you have another engagement, Mr. Enright, but you might take just along enough to get an exchange of names, addresses, telephone numbers, and the like.

I am going to suggest to Mr. Hallberg, who I think has a place of business somewhere around San Gabriel or San Marino, or South Pasadena,—

Mr. Hallberg: It is in Pasadena.

The Court: And you live at Corona del Mar?

Mr. Hallberg: That is correct.

The Court: —that it would probably be a convenience to the estate, and possibly an economy to it, if some of the untenanted apartment or apartments be made a headquarters for the receivership during its duration, so that you would have a headquarters for the purpose of this case in one of the properties which is to be managed. But you can talk that over with the attorneys.

Mr. Hallberg: Yes, sir. [15]

The Court: I believe that is all we can do at the moment.

You will have your order up during the day, Mr. Camusi?

Mr. Camusi: Yes, sir.

The Court: Then Mr. Hallberg can take over late this afternoon or tomorrow morning, and Mr. Enright can go forward with the appeal, if he is so advised.

Mr. Enright: Yes. I am engaged in trial in an-

other department, and I have to leave. We will cooperate in every respect with Mr. Hallberg.

The Court: Thank you. Mr. Cleaver, will you see that they have an agreeable place to work? They might want to use the witness room, or might find the jury room a more comfortable place, or they might prefer to use your room, although there are a lot of books in there.

Thank you, gentlemen. [16] * * * * *

Los Angeles, Tuesday, Dec. 1, 1953, 4:45 p.m.

The Court: All right, Mr. Wyatt.

Mr. Wyatt: We are in this position, if your Honor please, we would like, if possible, to obtain a stay one way or another. We should like to know if the court will set the amount of bond that the defendant would be required to file in order to obtain a supersedeas bond.

The situation is this: Under the Federal Rules of Civil Procedure the defendant may obtain a stay of execution, as a matter of right, by filing a supersedeas bond. He can do that at or after the time of appeal.

It is doubtful whether he can do it before then. And we are in this difficult predicament, that the defendant has not yet been served, that no judgment has been entered and he has received no order appointing a receiver.

The Court: Mr. Wyatt, I think perhaps the concern isn't quite as imminent as you have been led to believe. The receiver hasn't brought up the bond.

Mr. Wyatt: He has, however, attempted to obtain funds already. This is rather strange. I don't

know this, but I assumed that because he and his attorney had been around visiting apartment buildings and informing the manager she should turn money over to him, that he complied with all those requirements. [2]

I am rather surprised to find he hasn't yet filed a bond.

The Court: While there has been a receiver appointed a great many times it has been that in other districts that maybe they let them have a little different bonding procedure.

I fixed the bond. He went out to get it. I understood the bond would be presented to the court at 9:00 o'clock this morning. No one has been in.

Mr. Wyatt: I see. Well, the bond is only one of the expenses. Frankly, we are trying to avoid, in obtaining the stay pending the hearing of our motion, which was the reason I submitted the other application for a stay pending the proceedings, until such time as you could hear our battery of motions on the receivership, that that was the main reason, it is within the discretion of this court to stay any order that he grants pending, well, in the discretion of the court, upon such terms as he deems just.

It was my feeling at the time I submitted that order that if we could obtain a stay we would avoid, one, the expense of a bond premium, if we could make a further showing to the court successfully, and we feel we could, or we wouldn't be offering the motions, that if we could make a successful showing to the court why the proceedings should

be further stayed by granting the stay, until our motions could be heard, that the court would eliminate the expense of an accounting of these funds which the receiver has already been attempting [3] to obtain.

If he has not filed any bonds under a mistaken, under misapprehension, thinking he would obtain the funds without having filed the bond, there is another expense which may yet be avoided if we can obtain an order staying the order until such time as the motions are heard on Thursday.

If I may, I would like to renew my motion under those circumstances, since I find out he hasn't obtained a bond himself.

The Court: The bond will have to be approved by the court and he isn't entitled to take over any estate, under the rules, that are in this district, until he has posted a bond and taken the oath. [4]

* * * * *

Los Angeles, Friday, Jan. 15, 1954, 2:40 p.m.

The Court: I am sorry, gentlemen, for convening 40 minutes late. I had two reasons for that.

One of them was a civic duty which kept me about 15 minutes, and the other was a writ of habeas corpus which was waiting for attention in chambers when I got back, and it took me until the present time.

All of this I hoped might bring about an amicable resolution of your dispute. If it does not, we will proceed to hear your case.

This is a hearing on the petition of the Receiver for authority to renovate individual apartments

located in five apartment houses included among assets of the former Richman Trust.

The court knows of the written approval which has been filed by the litigant Lyda Tidwell and the objection which has been filed by Mr. Richman and, of course, the petition which Mr. Hallberg filed.

What we might do, unless you have arrived at some disposition, would be to have Mr. Hallberg take the stand and let anyone question him who wishes, bearing in mind, I hope, that the judge reads whatever is filed here. I am not ignorant of what the issue is. But ask him any questions that you think should be brought out to give us a proper record [2] upon which to act, and then I will hear your arguments or comments.

If anyone thinks of a better way to proceed, let me know.

Mr. Enright: Your Honor, it may be a better way to proceed in this way: That I do not construe Mr. Richmond's answer to the petition as an objection at all. We construe his answer to be an attempt on his part, and in his behalf, to inform the Receiver as best we can concerning this property which Mr. Richman had for some period of time operated.

The defendant feels and believes that the Receiver should have full authority to spend all moneys available to carry out a program of rehabilitating the property. If he, the Receiver, is of the opinion that it is advisable he should receive and use depreciation funds, capital receipts, some notes in there, I think, some of the intangibles that are

coming in, those should be received, and any other moneys in his possession, to properly take care of those properties.

Our answer is one drafted with the intent and for the purpose of giving to the Receiver our best knowledge based upon Mr. Richman's, I can say, just a little more than 20 years' experience in operating multiple income property in this immediate vicinity.

So I do not consider we have an objection.

The Court: Maybe "objection" was an unfortunate word. [3] I didn't construe what you would file as being a consent, that the Receiver go ahead and do the particular things in toto which the Receiver thinks, according to its petition, he should do.

So let's get, if we can get clarified, what he should do now.

Do you think it might be worth-while to have him come up here and have him state what he thinks should be done, in order to properly bring the properties into the best condition and most provident yield which can be expected in his administration?

Mr. Enright: I have no questions to ask, I assure you, of the Receiver on such a question.

Secondly, so far as Mr. Richman's answer is concerned, it is deemed without prejudice, that is, your Honor, filed in the manner which it is, without prejudice—I will say without prejudice because of our firm position that we believe we should maintain in this whole litigation.

The Court: I understand that.

Mr. Enright: You do, your Honor?

The Court: Yes. You take the position there should have been a judgment for the defendant, and that the appointment of a receiver and judgment for the plaintiff is not the result which the evidence and arguments spelled out.

Mr. Enright: Yes, your Honor. [4]

The Court: Well, that is the position usually the party who loses a lawsuit takes.

I understand, by being cooperative with the Receiver, nothing has been waived, and I appreciate the fact Mr. Hallberg, on occasions when he has seen me, has told me of very nice cooperation that Mr. Richman has given him in regard to matters where they have had occasion to work together, saying that even on some occasions Mr. Richman had gone beyond the mere request which the Receiver had made for information and had given positive cooperation on a voluntary, very useful basis.

So what I want to know now is to have a foundation when we leave the court today for an order which will tell Mr. Hallberg definitely what he should do in the matter, where he has asked us for instructions.

He has come here somewhat in the spirit and procedure of an executor of an estate who asks for directions. And as we all know, that is a common practice in probate, for executors to ask the court for directions.

I want to give him such as will not do violence

to the purpose we wish to accomplish ultimately by the judgment, and without bringing any basis for litigation over the things that have proceeded in this matter.

Mr. Enright: I can only say, your Honor, the best I could do would be to merely ask that the Receiver read the [5] answer I drafted and to further suggest that if the Receiver desires Mr. Richman's views upon a particular problem pertaining to a program on any one of the houses or all of the houses that I would appreciate his consulting direct with Mr. Richman.

I am not sufficiently informed in finances or individual apartment house operations to cross-examine or examine Mr. Hallberg.

Secondly, I wouldn't feel in a position to conduct such an examination, because to me it is a day-to-day and current problem that anyone managing and operating properties in excess of a value of a million dollars has. He must have authority, we feel. He must have discretion in exercising that authority.

That is all I have to say on that score.

The Court: Mr. Whyte, do you have anything that you think ought to be further brought to the court's attention?

Mr. Whyte: There are one or two facts which are not incorporated in the petition which is on file with the court. I thought that for the purpose of making the record as complete as possible, in support of the petition for authority to renovate, I might ask Mr. Hallberg to take the stand and we

would adduce one or two additional facts in support of the petition. [6]

ROY E. HALLBERG

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name?

The Witness: Roy E. Hallberg.

Direct Examination

Q. (By Mr. Whyte): Mr. Hallberg, calling your attention to the fact that your petition for authority to renovate was filed on December 18, 1953, and that this is January 15, 1954, are you familiar with any change in the situation which has taken place at the Fountain Manor Apartment House since the date of filing your petition for authority to renovate?

A. We have had four vacancies develop practically overnight. These vacancies apparently were caused by the apartments not being in tenable condition. By that I mean they were getting quite dirty. The entire effect there was one that the tenants found would not be conducive to continue living there.

They did go out and claimed they found better apartments in the area, in better condition, at moneys they were willing to pay.

Q. Did some of the tenants, in fact, leave because of the condition of the apartments which

(Testimony of Roy E. Hallberg.)

they complained of? [7] A. They did, yes.

Q. That, you say, has been quite recently?

A. Practically overnight, the last two nights.

Q. Have you had any trouble with the heaters at the various apartment houses?

A. I understand they are giving considerable trouble in certain apartments. And it is quite apparent something will have to be done there.

Q. Did you have in mind using some of the money for renovation to take care of that heater problem? A. Yes.

Q. What problems have you had at the Western Arms Apartment House recently, in regard to vacating of apartments?

A. Well, we took over the building on January—December 1st. There were seven vacancies. And in going into those apartments, they were extremely dirty and actually they were more or less carrying out the decorating scheme of about 1928.

In other words, they weren't modern. They were a tan color than was more or less prevalent at that time, and the lamps were old, quite. I would say they were obsolete.

Q. May I interrupt just for a moment?

A. Yes.

Q. Is the decor, that is, the decorating scheme and the colors at each one of the five apartment buildings rather [8] old-fashioned?

A. They are. It is the color that seemed to be quite prevalent back about 1928 and '30, '31, and

(Testimony of Roy E. Hallberg.)

in around in there. It is carried through. Tan color seems to be predominant.

Q. Will you continue what you were telling us about the Western Arms?

A. That is not the present-day attitude toward decorations in living rooms and homes; they want more color.

Q. When I interrupted you, will you just continue with what you were telling us about the Western Arms?

A. The lamps are quite old. They are not being used any more. And they do create an atmosphere in a home that isn't at all pleasant, especially when you see the way modern apartments are being furnished.

Q. Did you have any experience at the Western Arms, where you renovated one of the apartments and found that, as a result of that renovation, you were able to increase the rent?

A. Yes, we did have one that we tried out, just to see what would happen. We were able to rent that for a little bit more money.

Q. What particular item of renovation did you do?

A. That was painting—different colors entirely—and taking the furniture, which is mostly overstuffed, and [9] moving it out, and bringing into that apartment furniture that had color that would harmonize with the rest of them.

(Testimony of Roy E. Hallberg.)

Q. Did you then demand of the tenant an additional rent be paid?

A. Yes, we asked for a higher rent with a new tenant, and they paid it.

The Court: What was the differential?

The Witness: It was only \$5.00 a month, but it just shows what could be done.

Q. (By Mr. Whyte): Calling your attention to the Fountain Manor, is it true that one of the apartments there had been vacant for about two months at the time you took office as Receiver?

A. That is correct. That is a two-bedroom apartment and it had been shown any number of times to various prospective tenants. None of them would take it because, in the first place, the stove in that particular apartment was really pretty well worn out, and it would have cost about \$50.00 to repair that stove.

Q. What did you do with respect to the stove, if anything?

A. We went out and succeeded in buying a stove for, I think it was about \$99.98, and we put that in.

The next morning the first party took it and said, "Oh, boy, what a brand-new stove, what a nice stove," and we [10] rented it.

Q. For how much are you renting that apartment? A. \$135.00 a month.

Q. That was the same apartment that had been vacant for two months?

A. That is right.

(Testimony of Roy E. Hallberg.)

Q. What is the condition as to the tile in the bathrooms and the sinks at the Western Arms Apartments?

A. Well, they are—the tile is not in good condition there. The sinks have tile all around on sort of a work shelf, a work space there, and also around the edges of the sink. It has also about, I would say, ten inches of tile back splash against the wall. I would say 60 per cent of the apartments in that building have tile in front of that sink that has big pieces of tile broken out. It looks as though somebody took a Ginger Ale bottle and was trying to get the cap off and just hit the top of it there, and it took some of the tile with it.

It isn't a very pleasant-looking sink the way it is now. And there again the color of the tile is not in harmony with the rest of the kitchen.

Q. Have the tenants been complaining about that condition?

A. Yes, some of the tenants have complained about that. Of course, going into a kitchen that has those gouges of tile [11] out right in front where you see it, it doesn't add to the appearance of that particular kitchen.

Q. Is it your particular purpose, if the court grants you authority to renovate these apartments, to renovate only individual apartments as it becomes necessary, in your opinion, to take care of certain ones?

A. Actually, the purpose of this petition was to

(Testimony of Roy E. Hallberg.)

be allowed to go in and take these apartments as they became available and upgrade them.

I feel that by getting a better class of tenant attracted to the apartment we will be better off in the long run. The few dollars expended now, with the market that is getting a little bit more competitive, we are going to stand a little better——

Mr. Enright: Louder, please.

The Court: He said that with the market which is becoming a little more competitive——

The Witness: The market is becoming a little more competitive, and this experience we had last night and the night before, where four tenants moved out of one building, I think, points to the fact we are getting into a little more competitive market.

There are going to be a few more apartments available, and not having a completely acceptable apartment to prospective tenants, our vacancy factor will gradually go up. I [12] think you will agree with me on that.

The Court: On the whole, has your vacancy factor gone up during your receivership?

The Witness: Up to this point our vacancy factor has gone down just a wee bit.

The Court: You have done some renovating before this petition?

The Witness: Yes, before this petition.

The Court: I might say, counsel, Mr. Hallberg called me on a couple of occasions and said, "Would it be all right if I bought a stove or—" I don't know

(Testimony of Roy E. Hallberg.)

whether it was a stove, but I am just using that as a kind of an example; apartment equipment. But some particular small item.

■ And about the second or third call I told him, "I think it would be better if you filed a petition and we get some authority, and let the people who are the owners of this property know what you have in mind, rather than to have informal conversations with the judge in chambers about it."

So the petition was forthcoming. But I had understood he had put a stove in and that he was seeking to meet the market, which I think Mr. Richman would have to no doubt do if he were continuing in management.

We have had large insurance company operations in the apartment house field which have come here within, well, the past several years, but they are becoming increasingly reflected [13] in the situation where the over-population is not what it was, that is, the building and the like has been catching up with it.

The Witness: Over at the Oliver Cromwell, right around in that neighborhood, you have quite a few brand-new buildings, and those are direct competition to the Oliver Cromwell.

I just mention that because I was over there the other day and checked on the other streets. But you are going to have the same situation all over this area.

The Court: Does this involve, this particular program which is the subject of your present peti-

(Testimony of Roy E. Hallberg.)

tion, any financing beyond payment of bills out of current income?

The Witness: No, sir. I believe that this can be worked out from the moneys that are received from rent, without going outside for any additional financing.

The Court: Do any other counsel wish to ask Mr. Hallberg any questions?

Mr. Martin: We have no questions, your Honor. We filed our consent.

Cross Examination

Q. (By Mr. Enright): Mr. Hallberg, did you have an opportunity to examine the answer of Mr. Richman to your petition?

A. I just saw it this morning.

Q. I see. You do not have a copy of it? [14]

A. No, sir, not yet.

Q. I will furnish you with one.

The Court: It is quite full and quite detailed, and sets forth a lot of experience that Mr. Richman tells us he has had with these particular properties. I think the Receiver should know about it and have the benefit of the information that is in it.

Thank you for giving him a copy.

Mr. Enright: That was the object of my starting to ask questions of Mr. Hallberg, was to make certain that the details set forth in the answer were brought to his attention.

Mr. Whyte: May I inquire, Mr. Enright, whether you intend to quiz Mr. Hallberg concerning the

(Testimony of Roy E. Hallberg.)

allegations of the answer which you had filed? He has not had an opportunity to read that, as you know, so I hardly think it would be right for you to interrogate him concerning the subject matter of that answer.

Mr. Enright: Oh, no, I wouldn't do that. I have accomplished the object I had in asking Mr. Hallberg the questions so far, that is, bringing to his attention this answer.

I think that is all, your Honor.

One of our problems is that we have no knowledge of Mr. Hallberg's experience in the particular field, other than what your Honor told us the day he was appointed. We would appreciate Mr. Hallberg going over his problems, if he [15] will, to some degree with Mr. Richman from time to time, if that meets with the approval of the parties, because that is the only means we can have.

May I say, second-guessing Mr. Hallberg's judgment in shifting sinks in the Western Arms Apartments, which our answer shows is rapidly becoming a changed district, so far as colored people are concerned——

The Witness: They are not there yet, but they are gradually encroaching from the south.

The Court: They are certainly entitled to it, and they do pay rent.

The Witness: Yes, and sometimes good rent.

Mr. Enright: Yes, they pay rent. The question is whether or not a substantial amount of money should be expended on that property, bearing in

(Testimony of Roy E. Hallberg.)

mind that someone will have to decide whether or not they want the attorney to operate it in its present status or revert it to a house renting to colored people.

The Witness: Actually, there are no colored people there. They are further south.

Q. (By Mr. Enright): They are just over on Country Club Drive. That is a block away, isn't that right? A. Yes.

Q. And just a block down further.

A. Right around the corner there in that vicinity [16] there are a lot of homes on the next street back.

Q. Oh, yes. I live there, I know it very well, and I am quite certain——

Mr. Martin: It should be a safe territory then, if you live there, Mr. Enright.

Mr. Enright: Was there some question of safety?

Mr. Martin: No. I say we are not going to worry about it as long as you live near there; we will feel we are in good hands.

The Court: The petition is drawn in terms of asking for authority to do whatever improvement and renovation is necessary, to the extent of and not exceeding \$500.00 for each unit in the apartment.

It is drawn in a way that leads the court, on reading it, to believe that he doesn't propose to go out and spend \$500.00 on each apartment, but that there might be no expenditures in some and a few

(Testimony of Roy E. Hallberg.)

dollars in others; but, in any event, a maximum of \$500.00.

He tells us now he does not propose to incur any long-term indebtedness or to do anything which would incur a hypothecation of the title to the properties, that he can do what he has in mind out of current expenses, so the petition will be granted.

Mr. Whyte, I think you brought in an order, didn't you?

Mr. Whyte: I have not, your Honor. I think you indicated [17] you might endorse on the petition that it is so ordered.

Mr. Camusi: We have no objection to it.

The Court: If the clerk will hand up the petition, I will put that endorsement on it.

There is another matter in this case with which I am concerned. When were the objections, if any, to the findings of fact and conclusions of law and proposed judgment, or the alternate documents of that character—

Mr. Camusi: I understood the 16th.

Mr. Enright: That is right, the 16th that will be on file. I am afraid by mail, your Honor, because I didn't finish dictating until just before I came up here.

The Court: I understand that in lieu of having a formal order drawn, which, of course, is something by which Mr. Whyte would earn a fee—I don't mean to be chiseling on you, Mr. Whyte,—but counsel are agreeable that I simply write on

(Testimony of Roy E. Hallberg.)

the bottom of the petition the words, "This petition is granted."

Mr. Martin: So stipulated.

Mr. Camusi: So stipulated.

The Court: It is now so endorsed. You have your order, Mr. Hallberg.

The Witness: Thank you.

(Witness excused.)

The Court: We will look for either your amendments, [18] objections or acquiescence in form, as to what has heretofore been filed, when I come back to court after the week end. If there is any dispute we will have a chambers conference on it, or a court hearing, whatever the nature of what is filed indicates will be appropriate.

I don't mean for you not to say what you want. I will look it over. If it appears to justify a court hearing, we will set it for hearing as near to immediately as can be arranged, with the proper notice and recognition of the commitments of counsel and the court, with what accords with other counsel.

If it turns out that you are as agreeable in that matter as you were in the one today, we will simply enter the one which has been agreed upon as to form, understanding in no sense is it agreed upon to being a decision on the merits of the case, but only as to the form of judgment, form of findings and conclusions. And then you can get on with either amicable disposition of this controversy or we will proceed to an accounting, or we can sit by and wait for an appeal, whatever develops.

(Whereupon, at 3:15 o'clock p.m., Friday, January 15, 1954, an adjournment was taken.)

* * * * * [19]

Los Angeles, Monday, April 12, 1954, 11:00 a.m.

The Clerk: 13,742, Lyda Tidwell vs. Frederick I. Richman, et al., hearing on first and final report of Receiver; petition for allowance of fee to Receiver; petition for allowance of fees to attorney for Receiver.

The Court: Counsel, we have in mind there are two basic quarrels here. One as to how the money in the hands of the Receiver shall be divided, that is, what special credit shall be allowed to one party or charged against the other. I don't think we can take care of that in the time that remains today, if we are going to take care of the other.

The other is a matter of allowance of fees for the Receiver and for his attorney.

It seems to me we can excise that from the first and try it separately.

There is currently or there was as of the end of last week, at least, a misapprehension, I think, as to how the Receiver came to be appointed.

The Receiver didn't come to the court and make any representation. The Receiver didn't ask for the appointment.

I have a list of many people who have come in here from time to time asking to be considered as receivers, conservators, and the like.

This Receiver was appointed out of the court's knowledge [2] of him, the court's confidence in him.

It is true that when he came in I asked him to state some things for counsel, so they would know whether they cared to have him embark as Receiver, having in mind that we would appoint someone else if this one were unsatisfactory to you, and I think I told you so.

I have known this man, it is true, rather casually, but I have known of his reputation in the community and I have known of properties in this community which he has managed, which are reputedly successful.

So I am not going to hear any evidence on whether he should have been appointed. The time for that has passed. He has now discharged his duties and the question is shall he be paid, and if so, how much.

Now, we will proceed to hear that issue, and if there is a quarrel with his figures and you think you need an accounting, you think you need an audit by an accountant, we will allow a moderate but ample time for the procurement of such audit.

However, if either litigant wants to have the figures audited, the court is going to have them audited and I will take the fact that you are willing to hire an auditor and have them audited as a flag there is no confidence in the Receiver, a more substantial flag than simply saying he is a man of no fidelity, the way it has been said in briefs, [3] which are not pleadings.

If you want to go ahead and have an audit, you can have an audit, but I am going to have one for the court. We will appoint a certified public ac-

countant—I don't know yet who—satisfactory to the court, and one who doesn't know the Receiver. We will make him take an oath to that, and have an audit.

If it turns out the Receiver is either a miserable bookkeeper, and these records are in bad shape, or he is a man of no fidelity and has served in that capacity here, or with that taint, then the expense of the audit will be assessed against the Receiver. If it turns out there is no substance to it, it will be assessed to the person who made the challenge.

Mr. Enright: I take it the court desires a reply.

The Court: No. The court desires evidence.

Mr. Enright: If your Honor please, I would like to point out that we sincerely meant every word we stated in our objection. We intend to produce evidence in support of it.

We understand the law to be that upon a petition filed by a receiver, that upon an objection being filed, that they constitute the pleadings, that is, a complaint and an answer. And upon the issue being joined, then the matter is set down for trial.

We desire to avail ourselves of that due process, that [4] is, a trial involving these moneys.

The Court: You don't want to try it today?

Mr. Enright: No, your Honor.

The Court: All right. It is going to be divided as you have suggested, that is, we are going to try first the issue of what, if anything, the Receiver is entitled to, and get him paid, if he is entitled to anything, and what his attorney is entitled to, if anything, and get him paid.

The balance of it can be deposited by the Receiver into the registry of the court. The registrar can hold it while Mrs. Tidwell and Mr. Richman continue their timeless litigation.

Mr. Enright: That is acceptable. Now, as to the timeless litigation matter, I take it that that can be litigated between them and they can join their issue and get their litigation started. Or is that to be ruled on today, too?

The Court: No. From what you say you don't want anything heard or ruled on today.

Mr. Enright: No. I agree to this court hearing the attorney's fee and the Receiver's fee, and that be set down for trial at any time convenient to the parties and to the court.

But I do desire to take the Receiver's deposition and the attorney's deposition before then, and to make a further investigation of the record. [5]

Mr. Whyte: May I ask a question of counsel, your Honor?

The Court: Yes.

Mr. Whyte: Before we embark upon a long bitterly contested hearing as to the Receiver's fees and his attorney's fees, I would like to ask counsel the meaning of the last paragraph of his objections filed by him on behalf of Mr. Richman.

He says at page 12 of those objections, line 11:

"That the trial of the issues created by these pleadings be not had until your answering defendant has had an opportunity to avail himself of the discovery processes of this court to prepare for a hearing upon the Receiver's petition for more than

\$4,500.00 fees and the attorneys' petition for more than \$3,000.00 fees and for such other and further relief as may be just and proper in the premises."

Do I understand from that language that the defendant, Mr. Richman, desires a hearing in the event that the Receiver wishes the court to assess more than \$4,500.00 for his fees and the attorney more than \$3,000.00 for his fees?

Mr. Enright: I don't know what the Receiver is asking as yet. I asked you specifically, Mr. Whyte, if you wouldn't inform me so we could make a judgment on our own part, but I didn't get that reply.

If the Receiver is asking for \$4,500.00 or \$5,000.00, [6] which I assume he is—from our telephone conversation I assume that to be his position—plus extraordinary fees, then I assure you, sir, we will desire a trial on the merits.

Mr. Whyte: Do I understand then if the Receiver is willing to take \$4,500.00 and if his attorneys are willing to take \$3,000.00 you do not desire a trial on the merits?

Mr. Enright: No. There has been further point raised since then. As I understand the issue, there is a collateral issue now and I don't know what the position of the court is on it.

I did receive a brief this morning and I can answer it, if necessary, that the plaintiff Lyda Tidwell complains that this court should now adjudicate their respective rights under a contract that they made on February 25, 1953, when she accepted the offer of Frederick Richman to sell to her.

That, I understand, according to their pleadings here, is to be determined by this court and that is a separate and distinct new cause of action, new issue.

And the most unusual part of it is that they are now asking us to pay revenue stamps, pay insurance policy on the property as conveyed, when the very escrow they signed carrying out that agreement specifically agrees that Lyda Tidwell pay those.

But going back, Mr. Whyte, to your answer, I would say in this status of the record that we desire to have a hearing [7] and an opportunity to present evidence, if the Receiver expects \$4,500.00 or any sum substantially near that amount.

The Court: There is such a sharp conflict presented by the pleadings that, on one basis, the Receiver might get more than a thousand, and on others he might get ten. I can't tell from the pleadings. The court has to have the evidence, unless the parties are able to acknowledge certain things to be true.

The Receiver says that Mr. Richman let the place run down to where rain came in and ruined otherwise suitable painting and cost the estate several hundred dollars to correct the fault which reasonably prudent management, even minimum management, I should say, would have prevented.

Mr. Richman, on the other hand, says that the Receiver has been tossing away money and failed to comply with lawful orders and haggled until he got himself cited into the Municipal Court, with Mr. Richman along with him.

So I don't know how a court can decide that by reading the charge of one against the other, or the answers.

The only thing a court can do is hear the evidence. That we want to hear. But it is a salient principle with regard to receiverships that receivers, whatever they earn, if they do earn, should have it fairly near to the close of their performance of their duties.

So I want to hear it as soon as due process—I mean in [8] the spirit, not just the letter—will allow people to get ready for it. When will that be? Bearing in mind we are going to try these separately.

Tidwell against Richman, so far as the arguments that come up in that matter, as distinguished from the receivership matter, has been so protracted a matter and the main issues have been disposed of—they involved hundreds of thousands of dollars—that this quarrel as to who gets what, on the relatively small amount in the Receiver's hands, I think will just have to wait to where we can fit it into our calendar as we do ordinary litigation.

So I would like to try the Receiver fees and his attorneys' fees as soon as you feel that prudence and diligence can bring it in court.

Mr. Enright: At the convenience of counsel and the court, I will be ready for trial within 20 days from now.

I do want to comment, your Honor, though, concerning the statement I believe your Honor has twice made now. This second issue, we do not concede that issue is before this court. You appreci-

ate that, your Honor. A contract was made settling this lawsuit in February 1953. There is no pleading before the court involving that contract, as I see it.

The Court: But the money itself is before the court.

Mr. Enright: I appreciate that, but they adjudicated their rights in an original proceeding. We have authority to [9] support our position on that score. We can cross that bridge when we come to it.

We do have to try the Receiver's fees and the attorneys' fees before your Honor. I do not want it considered by anyone I am conceding the other matter.

I will be ready for trial within 20 days, providing the Receiver and his attorney can appear.

The Court: They want to be paid, I suppose, in the reasonably near future. The Receiver should or would make himself available for a deposition promptly.

Mr. Enright: If they can appear within the next ten days for their depositions, say, 15 days or 10 days after the taking of their depositions will be agreeable with me.

The Court: How long do you think it will take to try this question of Receivers' fees?

Mr. Enright: I will say not less than two days, your Honor.

The Court: Well, we like to think in terms of not more than, so that I know how to budget it, where we can providently look for a place to fit it into the calendar.

Mr. Enright: I would say the objecting party's evidence would reasonably take two days to present.

The Court: How about you, Mr. Camusi?

Mr. Camusi: I won't need any time on this. I think the only questions involved are questions of law. I don't have any [10] argument with the accounting, except as it affects, really, a division after the payment to the Receiver and his attorney.

The Court: Do I understand then the argument, insofar as you getting it in, is how the money shall be divided, which is left after the Receiver gets through.

Mr. Enright: Yes. And, of course, I may want to comment on what I think reasonable fees are. But as far as being involved, we are not making any charge that the Receiver hasn't done the job given him.

The Court: I will set it for Tuesday, May 11th. That gives us 29 days from today. Tuesday, May 11th, at 9:30. If we set it at that time maybe we can get through that same week.

Now, are you going to have an audit?

Mr. Enright: I am not going to have an audit made. I am going to further examine the records that I understand are being kept intact by the plaintiff at the Oliver Cromwell. So far as an audit is concerned, we are not causing an audit to be prepared.

Mr. Camusi: We have kept them intact. However, I moved them before getting your letter. They are out at the offices of the realtor, of the property

manager. They will be available any time you want to see them.

The Court: All right. Any party to the action that wants an audit made can have it made. The court will not have [11] an audit made for the court, unless there be some audit made by one of the parties litigant or a party litigant asks the court to appoint an auditor.

There is no answer to that question now. You can write me a letter if you change your mind.

Mr. Enright: I suppose Mr. Whyte and I could agree among ourselves for deposition, without making it a part of the record.

Mr. Whyte: I believe so, counsel.

The Court: Is there anything else then we can do on this day?

The other matter, so far as I see it, is just a question of how the funds are to be divided. I had the impression here that it was settled by the stipulation under which we proceeded, which led to settlement of the case, and with the letters and agreements which were entered into contemporaneously with the stipulation, satisfaction of judgment and the dismissal.

If it is to be disposed of on some other basis, we can or we will have to have that brought in by appropriate pleading.

Is there anything else we can do?

Mr. Camusi: I won't comment to the court's last comment, but I hope we can argue that question later.

The Court: Oh, yes. Of course, you will have a trial date set——

Mr. Camusi: Pretrial—— [12]

The Court: Perhaps we ought to have a pre-trial on it.

Mr. Camusi: I think there is a little accounting involved and maybe it will result in stipulation of those issues, and leave the trial more or less a matter of law.

The Court: Let's set a pretrial on it then. We are going to try the Receiver's fee issue on Tuesday, May 11th.

Let's pretry the other issue on Friday, May 14th.

Mr. Enright: Your Honor, I again point out that this court does not have jurisdiction of a contract made by Lyda Tidwell and Frederick Richman on February 25, 1953.

Mr. Camusi: Let's argue that at the pretrial.

The Court: That would appear *prima facie* to be so.

Mr. Camusi says, "Let's argue it." I am going to hold my mind open until we hear the argument.

If you are going to try and inject a contract of that sort in here, why, let me have a memorandum in advance of the pretrial on May 14th. You might let me have one, anyway, advising the court of what you feel the issues are respecting the division of the money after the lawful charges upon it have been exhausted by payment of the fees. And you can do likewise, Mr. Enright.

We might find, when we come here on the 14th, that everyone is agreed as to what the issues are.

If not, we will just have to have some framing of the issues by the pretrial process. [13]

Mr. Enright: That is on May 14th?

The Court: May 14th.

Mr. Enright: Yes, that is agreeable.

The Court: At 10:00 o'clock.

Mr. Enright: These memoranda now are to be concurrent?

The Court: They are not to be legal arguments. You shall point out what the issues are with respect to disposition of this money and simply state a point or points of law that are involved, with a citation to authorities.

But I do not think either the situation or the money involved requires that it be briefed, particularly in advance of framing the issues.

Mr. Enright: The time, now,——

The Court: 10:00 o'clock.

Mr. Enright: On the 14th we will submit our memorandum then.

The Court: The memorandum five days before then.

Mr. Enright: Five days before?

The Court: Yes. We will try the Receiver's fees the preceding Tuesday. That is, the Tuesday preceding the day we are going to have the pretrial.

(Whereupon, at 11:35 o'clock a.m., Monday,

April 12, 1954, an adjournment was taken.)

* * * * * [14]

Wednesday, May 12, 1954, 11:15 a.m.

Mr. Whyte: I assume that your Honor will give me latitude on redirect examination, to develop

whatever additional facts that may not have been shown either by the report of the Receiver or by his deposition.

The Court: You both will have all the latitude you need to develop pertinent evidence. However, we are going to stick to the issues triable in this proceeding. And this is not a proceeding to determine qualifications preliminary to [4] appointment.

As to the Receiver's past employment, of course, that is relevant upon the question of what capacity of employment he has had in the past, because if you appoint a hundred-dollar-a-month clerk as a receiver, he gets a different compensation and brings a different quality of understanding to his work than if you appoint a hundred-thousand-dollar-a-year bank president. It is important for that purpose then not to determine whether the man should be appointed.

I have said before, but I think I will say again for the record of this proceeding today, that this Receiver did not ask for the appointment. The court sought him out on the court's own motion, the way judges of this division generally do. We disfavor having a list of people who want to be appointed receiver and prefer to generally make selections on our own knowledge or inquiry. * * * * *

Mr. Whyte: Is there no way we can get the deposition in evidence without reading it in its entirety, so as to make it a part of this record?

The Court: It may be offered as an exhibit.

Mr. Whyte: That is what I am suggesting.

The Court: All right.

Mr. Whyte: That it be offered as an exhibit, and I assume that that would require a settlement of the disputed objections and questions which were asked.

The Court: Some lawyers think it does and others think that it is sufficient to trust a judge to only consider the matters which are relevant and material.

Mr. Whyte: I am quite willing to do that, your Honor; quite willing. * * * * *

Mr. Enright: My silence to be construed as acquiescence in anything that has been said.

First, the petition itself is the complaint, and as of this moment I do not know what the Receiver seeks as to amount of compensation, in that he has failed to comply with Rule 18 (c) (4), which provides, "The notice shall show in what amount and covering what period fees will be asked for." [7]

Secondly, I view the objections filed in behalf of the defendant as an answer to the petition, which petition and answer join issue. And I feel that the issue involving—I assume the Receiver desires in excess of \$4,000.00. It is indicated that he wants \$5,000.00. That that issue, involving that amount of money, should be tried in due course, that is, upon the pleadings and the issues thereby created.

* * * * * [8]

Mr. Whyte: I am going to again renew my request that the deposition be introduced in evidence as an exhibit to the Receiver's report and petition. Otherwise, I shall have to consume the time of this

court in having the Receiver again testify to matters which were covered in the deposition, which are not covered in his report.

For the purpose of shortening the proceedings, I am suggesting that the deposition be annexed and introduced in evidence as an exhibit to the Receiver's report and petition.

The Court: Of course, depositions generally are not available as a substitute for live testimony in the courtroom, if the witness is available.

There is an exception to that under what looks to me to be an anomalous thing in our civil rules, that a deposition of a party may be received into evidence, introduced by either party, and it will be received.

I think the rule provides that, Mr. Enright. And while it is not in keeping with legal tradition the way we were taught it in law school, of legal practice, the way it is engaged in in the Superior Court, I don't see any escape from receiving this deposition if it is offered. Do you? Any legal escape.

Mr. Enright: Well, there will be a motion to strike some [9] of the answers that were nonresponsive to questions propounded. I will have to pursue the deposition with the usual manner in which one does when questions are propounded in court, and see what remains in that deposition if it is received in evidence. I should be accorded that privilege.

The Court: Yes. I would much rather follow Mr. Enright's suggestion, that the deposition be treated as something which was done by way of discovery and for exploration, and if oral evidence be

given which is in conflict with what was given in the deposition, the deposition may be used either for memory refreshment or impeachment.

But let's have the direct evidence of Mr. Hallberg as it might be needed to supplement the report. It is agreeable to me to receive it as a portion of his direct testimony.

You don't have to do that, Mr. Whyte, if you don't want to. That is what we think should be done.

Mr. Whyte: Pursuant to Rule 26, Federal Rules of Civil Procedure, I am going to offer the entire deposition of Mr. Hallberg in evidence.

The Court: It will be received as Receiver's first in order.

Mr. Whyte: Thank you, your Honor. I am now willing to——

Mr. Enright: Do you have another subject matter now, Mr. Whyte?

Mr. Whyte: I was going to say that I am now willing to [10] submit the case in chief of Mr. Hallberg, the Receiver, upon the basis of his report and petition for fees, as filed with the court, together with his deposition which I have now offered in evidence in its entirety, and rest my case in chief upon those two documents.

The Court: That is the report and the deposition?

Mr. Whyte: Yes.

The Court: Is there any objection to the report being received in evidence?

Mr. Enright: Oh, yes, your Honor. It is only a

pleading. It is not even verified. I don't see how I could quite accept that as a method of proof of facts.

The Court: You had better lay a foundation for the facts set forth for the report, as a report.

Mr. Whyte: I understood the court to suggest it initially, that the best method of doing this would be to submit the case in chief, the direct testimony, on the basis of the report.

The Court: I did. I still think so, but your opposition doesn't. He says it is only a pleading. And I think technically he is correct. It is only a pleading unless the exhibits to it are received into evidence upon a proper foundation. Then that will become an exhibit. Or unless the report itself be stipulated to be the direct examination, the direct testimony of the Receiver, which has often been done [11] in these courts by stipulation. That then opens up a wide vista of cross examination.

Mr. Whyte: Then I will ask Mr. Enright whether or not he will stipulate that the Receiver's report and petition for fees, together with the Receiver's deposition, may constitute the direct testimony of the Receiver in this case, subject to his cross examination on all of the matters set forth in those documents.

Mr. Enright: Are you through?

Mr. Whyte: Yes.

Mr. Enright: Now, concerning the two subject matters you propose, to wit, the deposition, first, I wish to ask at this time that I be accorded the privilege of examining that deposition before it is re-

ceived in evidence. So far as I know, I have never seen the original deposition yet.

Secondly, reserve for a motion to strike those portions of the deposition which were not even responsive to questions, if there are any. That takes care of the deposition part.

I understand it has been received in evidence?

The Court: We will order that it be stricken from evidence for the purpose of your having an opportunity to examine it and to object. I only admitted it in evidence because of the Federal Rule which Mr. Whyte read. I don't think it is very helpful, to just take depositions as evidence.

Mr. Enright: Now, concerning the petition itself, it is [12] not verified. There are many statements in the petition that——

Mr. Whyte: I beg your pardon. The petition is verified.

Mr. Enright: Pardon me, Mr. Whyte, if I am in error.

The Court: I was in the same error. I read it last night, but I read simply the court's working copy and that working copy did not show a verification.

Mr. Enright: I would say that it would appear as though it was verified, that is, the copy I have. But I fell into the same error, your Honor.

In any event, the statements made in the petition, being pages 1 to 14, as distinguished from the exhibits, are not testimony or ultimate facts. They are conclusions in most instances.

The Court: I recognize a great many are and I

recognize a great many that are outside the usual scope of a receiver's report, such as recommendations for future handling of the property. Those are things a receiver might make by way of suggestion to his successor.

I can't accept them here as probative on any act of the Receiver with respect to the conduct of his trust, and I would not consider them that way.

If you want to excise those portions of it, that might be done. If you want to trust me to do it, I will look at it with a very critical eye.

Mr. Enright: I would have to take the position if it is [13] received in evidence it is received over my objection.

The Court: All right. There is another matter——

Mr. Whyte: Do I understand then, in response to my request for a stipulation, that the case in chief, the direct testimony of the Receiver be submitted upon his petition and report, and his deposition, that you are refusing to so stipulate?

Mr. Enright: I do so refuse.

Mr. Whyte: Thank you.

Mr. Enright: I have been served this morning with a supplemental petition for allowance of fees to attorney and Receiver. I will check that during the noon recess. It was just handed to me a few moments ago by Mr. Whyte.

The Court: Then, Mr. Whyte, you will have to put on some evidence. * * * * * [14]

Mr. Whyte: Mr. Hallberg, will you take the stand, please?

ROY E. HALLBERG

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, please?

The Witness: Roy E. Hallberg.

Mr. Whyte: I wonder if I might have the original report and petition of the Receiver. My copy does not have the verification upon it.

The Clerk: Yes, sir.

The Court: The court should note for the record here that when the Receiver was engaged in the preparation of his report either Mr. Hallberg or Mr. Whyte—I don't recall which one—called me and said, "Do we have to set forth a particular amount or may we leave it to the discretion of the court and ask for a reasonable fee?"

I told them I would like for them to set forth in detail what had been done and if they wanted to leave it to the court to determine a reasonable amount that the court would not insist upon compliance with the rule that an amount shall [15] be prayed for. But they could leave it as reasonable or they would state a specific amount.

I was then told that Mr. Whyte felt he ought to put in a specific amount, which he did, and that Mr. Hallberg preferred to leave his to a prayer for reasonable amount.

Direct Examination

Q. (By Mr. Whyte): Mr. Hallberg, will you give us your address, please?

(Testimony of Roy E. Hallberg.)

A. 1202 Seaview, Corona del Mar.

Q. You were appointed as the Receiver in this matter on or about December 1, 1953, were you not?

A. That is correct.

Q. And you gave up your active duties of management and operation of the affairs of the former Richman Trust as of February 28, 1954, did you not?

A. That is correct.

Q. I direct your attention to the original of a document entitled "First and Final Report of Receiver and Petition for Allowance of Fee to Receiver", and more particularly to the verification on the inside of the blue backer to which that report and petition is annexed, and I ask you whether or not that is your signature which appears on the verification on the blue backer.

A. That is my signature.

Q. Are you able to state for the court, with reference [16] to each and all of the matters alleged from pages 1 to 14 of that petition and report, that is, everything exclusive of the exhibits, are each and all of the matters therein alleged true, to the best of your knowledge?

Mr. Enright: To which objection is made upon the ground it would call for a conclusion of the witness to state whether or not he or some agent or someone else did something that is alleged in 14 pages here. And it is a conclusion to state they did certain things that are stated here.

The Court: I understand the question to be whe-

(Testimony of Roy E. Hallberg.)

ther it is true, to the best of his knowledge and belief. That is a question often asked of people in executive capacity.

Objection overruled.

Mr. Enright: Would you read the question, Miss Reporter? (The question was read.)

The Witness: They are all true, to the best of my knowledge.

The Court: Let's have a moment to ask a question. Now, the Receiver hasn't asked for any specific amount. He says he will take whatever is reasonable.

What do you think is reasonable, Mr. Enright? You have looked over the report. Your client himself had charge of these same properties over a course of some years and has made charges for his services in connection with management.

Just what do you think would be a reasonable amount to [17] award this Receiver? There might not be any dispute here. You state it and we will ask him if that is acceptable to him.

Mr. Enright: Well, I can best answer the court this way: The man apparently was earning \$355.00 a month for his full time, at all times when he was acting as Receiver.

Apparently, he spent some week ends in rendering some services on this receivership. Had it not been for his manner in rendering his services and the manner in which he misrepresented, I feel, or misstated to this court his experience in handling or managing apartment house properties, and if it

(Testimony of Roy E. Hallberg.)

were not for his unclean hands in making those representations, I would be inclined to compensate him at his usual rate of compensation, which was during the past four years as follows:

He worked for the Morgan Construction Tooth Company, where he received \$100.00 a week drawing account.

He states for about six or seven months in 1951 he worked for Narmco—some manufacturer of fishing rods down here at Costa Mesa, where he received \$350.00 a month for about a year.

He is working now, as best I could find out, for the County of Orange, and hadn't missed work for the County of Orange when he was to be rendering his own personal services as Receiver. His compensation for the County of Orange, as I understand it, is \$350.00, or \$355.00 a month. [18]

I don't know what the man feels he is entitled to receive. It places a burden on us, your Honor.

So far as we are concerned, we found out later these apartment houses are pretty much running themselves, and I am satisfied the evidence will show that.

Now, for me to sit here and judge what we should pay to this man, who came into this receivership unsolicited by your Honor—I mean at your Honor's solicitation, as I understand it from your statement this morning, your Honor,—

The Court: Yes. He came in at my request. I called him and asked him if he would be available to serve as receiver.

(Testimony of Roy E. Hallberg.)

He wanted to know what it would involve, and I told him in a general way what it would be.

I made the call because, although my acquaintance with him has not been personally very extensive, I have known him casually and was a neighbor of his, and I have known of properties that I thought he was managing for an aged relative. It turns out from the deposition that it was his own property.

I had known from just casual conversation that he had had a responsible part in the management of considerable income property in Chicago. I had thought for a term of years. And it turns out now it was just a little over one year, if the deposition is right.

Knowing that Mr. Richman had carried on other ventures [19] while he managed these properties, I thought that while it would be part time, it would be a substantial part-time employment, and having confidence in the man's integrity and ability, I asked him if he would serve and he said he would.

Mr. Enright: I fully appreciate the situation, your Honor, so far as your Honor is concerned, as judge of this court. I hope you, in turn, will appreciate the position I am in here.

Now, the man says he managed property. Well, the deposition shows, and I am sure it is the fact—at least, I have the county records, County Recorder's Office checked, and I can produce the record if necessary—he operated an apartment over there, 14 units, for 11 months. That is the County Record-

(Testimony of Roy E. Hallberg.)

er's office records. That is the extent of his managing of properties anywhere comparable to——

The Court: What about the 400-unit apartments in Chicago?

Mr. Enright: Concerning those in the year of 1931, according to his own testimony in his deposition, he was employed, not by a receiver, as we were led to believe he was employed by a receiver, but, rather, the owner of bonds issued by a bank, and then by virtue of those bonds—I can't locate the man's name—he took over some properties. And apparently Mr. Hallberg worked for him for about a year in 1931 in Chicago, in collecting rents. That certainly is [20] different than managing property in Los Angeles in the year 1954 as a property manager. It certainly is completely foreign to what was represented to us as to the qualifications and experience of this Receiver.

The Court: Before he was appointed I asked all counsel in and made Mr. Hallberg available to them and invited them to ask questions, and if there were any questions about the qualification of the man to serve, the court would appreciate the questions being asked before the service was rendered, rather than at the completion of it.

However, no question s were asked then. Of course, I appreciate counsel didn't know him, but the field was open. They could have fished then as much as they would have wanted to.

Mr. Enright: At that specific time, your Honor, the transcript will show that I was engaged in

(Testimony of Roy E. Hallberg.)

trial in another court. I came to this court at 1:30 in the afternoon. I advised the court I relied upon the court's investigation of the proposed receiver, that the court being satisfied with his integrity and the receiver—and then making the representation to the court and to myself of his experience, I did not interrogate him and I do not feel that we are bound by his, shall I say, improper statements made on that day, which are as follows, at page 9:

“The Court: Just have a chair, Mr. Hallberg.

“The court has now given its decision in the matter, which I discussed with you last week, and I have asked counsel if there is any objection—of course, the defendant feels no doubt that he should have won the case, but since a receiver is to be appointed—whether they have any objection to you as the selection of the court as receiver.

“Now, they haven't announced any objection, but they don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some years was in the management of real properties, sometimes in connection with court receiverships, and that your experience in it locally has been in the management of your own real properties, which were of income nature, and of similar properties owned by either your or your wife's relatives.

“Mr. Hallberg: That is correct.”

And so on. Those were the representations that were made to us. He certainly represented himself

(Testimony of Roy E. Hallberg.)

as being a person experienced to manage and operate.

The further point is this: Certainly, all parties understood this man was going to be the receiver in fact as well as in name. He went to work for the County or Orange instead of being receiver. [22]

How much we should compensate him I don't know. I would like to hear the man say what he feels he is entitled to for his week ends or his trips up here.

The Court: We had beter take full evidence on what he did.

Mr. Whyte: Shall I proceed, your Honor?

The Court: Yes.

Q. (By Mr. Whyte): Again directing your attention to pages 1 to 14 of your "First and Final Report and Petition for Allowance of Fees to Receiver", as to each and all of the matters therein alleged, exclusive of those which were alleged on your information and belief, would you now testify here on the stand, under oath, subject to cross examination, that each and all of those matters are true to your own personal knowledge?

A. To the best of my knowledge each and every statement there is true.

Q. And as to each and all matters therein alleged in those 18 pages, which you state to be true according to your best information and belief, are you now willing to testify here on the witness stand under oath, and subject to cross examination, that

(Testimony of Roy E. Hallberg.)

those matters are true according to your best information and belief? A. Yes.

Q. Now, calling your attention to the schedules or exhibits which are attached to your "First and Final Report and Petition for Allowance of Fees to Receiver" filed herein on March 18, 1954, and directing your attention first to Schedule A, will you tell us by whom that Schedule was prepared, please?

A. This Schedule was originally prepared by Mr. Richman and presented to me, copy of which I signed at the time I received the various documents pertaining to all these apartments, the files, the various deeds, insurance policies, promissory notes, books of account, records, all current.

Q. Are you able to state, Mr. Hallberg, whether in your capacity as Receiver of all the real and personal property constituting the former Richman Trust you received from Mr. Richman, the former trustee, each and all of the assets, properties, documents, books, records, et cetera, which are set forth on Schedule A annexed to your report and petition?

A. I received all these insofar as I was able to check the individual items in about 12 or 14 cartons and also in the files; naturally, it would have taken months to go through every sheet that was there.

However, I did receive some additional information sometime in January on some parapet controversy that was not given to me originally.

Q. Is it your testimony that at least at some time during the course of your receivership, which continued from [24] on or about December 1, 1953,

(Testimony of Roy E. Hallberg.)

to and including February 28, 1954, you received each and all of the assets, properties, books, records, and et cetera, set forth on that Schedule?

A. I believe I did.

Q. You employed a bookkeeper in the course of your operations as Receiver of the real and personal property constituting the former Richman Trust, did you not? A. I did.

Q. What was the name of the bookkeeper originally employed by you? A. Mr. Harrison.

Q. Did you find it necessary or desirable to discharge Mr. Harrison from his position at some time during the course of your receivership? A. I did.

Q. Did you take any steps toward hiring somebody to replace Mr. Harrison as your bookkeeper?

A. I did.

Q. Whom did you employ?

A. A Miss Findeisen.

Q. May I inquire whether Miss Findeisen prepared this Schedule A, which is annexed to your petition and report?

A. I believe that part of this was prepared by Miss Findeisen and the balance by Miss Cosgrove, or Mrs. Hallberg.

Q. What position was Mrs. Hallberg or Miss Cosgrove—by the way, are they one and the same person?

A. They are one and the same. Miss Cosgrove is Mrs. Hallberg. For business reasons we have always used her maiden name.

Q. What position was Mrs. Hallberg occupying with reference to this receivership?

(Testimony of Roy E. Hallberg.)

Mr. Enright: I will object on the ground it would be a conclusion for him to state.

The Court: Well, he was supposedly in charge of the receivership insofar as the receiver ever is; the court being ultimately in charge.

I think he can state the part that the several employees had in the setup. What she actually did, she will have to tell. But he can tell what her position was.

The Witness: She was assisting me in a lot of the details connected with the operation of the buildings; because of her background and training she was quite effective in her handling of decorating, purchasing of materials, and overseeing the operations of the actual refurbishing of some of these apartments.

Mr. Enright: I move to strike the answer on the ground the answer is not responsive.

Secondly, on the ground the answer contains conclusions as to effectiveness and other similar terms.

The Court: Well, the answer does contain quite a bit of [26] conclusion. If it were allowed to stay, I would consider it a statement of a reason why he employed her, rather than what she accomplished.

Do you want it stricken, counsel?

We will strike the answer. Read the question. And we will ask for an answer of the question.

(The question was read.)

The Witness: She represented me in a good many of our contacts with service people, with the managers, with the various trades people we had to deal with.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Whyte): Are you familiar with the duties which were performed by Mrs. Hallberg in connection with this receivership?

A. I definitely am.

Q. What duties, in general, did she perform?

A. She performed various duties. Among them was overseeing the decorating of a lot of these apartments, the combining of color schemes to make the apartments more desirable, and the selection of a lot of materials that were used in draperies, in upholstering; all with one idea in mind, of getting the best we possibly could for the least amount of money.

The Court: We will suspend now until 2:00. We will recess until that time.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.)

Los Angeles, Wednesday, May 12, 1954, 2:00 p.m.

The Court: Knowing the bailiff would be away, I told him to arrange for a bailiff. I thought he had done so.

Mr. Enright: May it please the court, this morning the court inquired of counsel for Defendant Richman as to what he would consider as a reasonable fee.

During the noontime I have further considered. I was not prepared to answer this morning, other than the manner in which I did. And during the noontime I considered the matter and am willing to offer, one, that the Receiver and his attorney receive five per cent of the rents paid, less the

(Testimony of Roy E. Hallberg.)

bookkeeping expenses incurred by the Receiver for the salaries of Mr. Harrison and Miss Findeisen. It is less than \$1,700.00 from the Receiver's report, whatever that figure is exactly.

Secondly, that the fee due to the defendant Richman for his services in the month of November, listed as a payable or obligation of the trust, be paid to the defendant.

Thirdly, that the court hold that there should be added to the fund reported by the Receiver the following items:

A. \$785.00 petty cash, which the Receiver's report shows as being within his control as of February 28, 1945, the date of the termination of his active duty in accordance with the order of the court dated February 26, 1954, which [28] order directed the Receiver to retain in his control moneys in the bank and moneys under his control.

B. The February 26th, 27th, and 28th collections of rents, which were collected by the managers, and which were turned over to the plaintiff Lyda Tidwell's agents, particularly, according to the deposition of Mr. Hallberg, Mr. Udall. The report shows it to be approximately \$2,000.00, the report of the Receiver. We think it is approximately \$900.00. That could be subject to accounting, whatever the exact amount was, which I think can be ascertained.

C. That there be added to the fund of the Receiver—that doesn't mean he pays this money at all—the Oliver Cromwell payment in the amount of \$2,027.25. In other words, my point 3 is that these

(Testimony of Roy E. Hallberg.)

are certain sums of money that are subject to settlement between the plaintiff and the defendant, so long as the receiver reports the sum of money as being on hand; it is of no consequence it be physically on hand. But merely that it is reported as a part of the accounting, that those moneys were there.

As to who they are chargeable to, I think that is a matter for the plaintiff and defendant to settle. The contract, I am sure, is quite clear, they are chargeable to the plaintiff. But that is another matter. That is the second issue we have reserved that we are going to submit at pretrial. [29]

The Court: Your statement, Mr. Enright, brings into this offer, if it is an offer, matters which are involved in the dispute between plaintiff and defendant, so involved that I think we had better just go ahead and take the evidence.

Mr. Enright: Well, these items will involve moneys that are in the accounting.

Mr. Whyte: Mr. Hallberg, will you resume the stand, please?

ROY E. HALLBERG

called as a witness in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Mr. Whyte: Miss Reporter, will you kindly read the last question? (The record was read.)

Q. (By Mr. Whyte): What, if anything, did Mrs. Hallberg do toward collecting the rents?

(Testimony of Roy E. Hallberg.)

A. She made periodic trips every other day, practically, to the various apartments and picked up the moneys that were on hand and collected by the managers.

Q. What did she do with those moneys?

A. She brought those moneys into the office, made recordings of them and credited it to the proper buildings and deposit was made up and placed in the bank. [30]

Q. In what bank was that, Mr. Hallberg?

A. That was the bank over at Western and Third, I believe.

Q. Did you maintain an account there as Receiver of the assets of the former Richman trust?

A. I did.

Q. What, if anything, did Mrs. Hallberg do with reference to the bookkeeping?

A. She assisted Miss Findeisen in some of the bookkeeping work.

Q. Did she ever assist Mr. Harrison during the time that he was the bookkeeper for the estate?

A. I believe she did on one or two occasions.

Q. Did Mrs. Hallberg have anything to do with the purchasing of supplies for the various apartment houses?

A. She most certainly did, especially when the supplies were items that tended to enhance the appearance of the apartments.

Mr. Enright: I will move to strike the words "tended to enhance the appearance" as a conclusion of this witness.

(Testimony of Roy E. Hallberg.)

The Court: Motion granted.

Q. (By Mr. Whyte): What compensation, if any, did Mrs. Hallberg receive from the receivership estate for the services which you have detailed?

A. She has not received anything. [31]

Q. Was she subject to your direction and control in the performance of those duties?

A. She most certainly was.

Q. Were Mr. Harrison, the original bookkeeper, and his successor, Miss Findeisen, subject to your direction and control in connection with the performance of their bookkeeping duties?

A. They certainly were.

Q. By the way, Mr. Hallberg, do you happen to know whether your wife is a college graduate or not?

A. She is a graduate of the University of Minnesota.

Q. What business training, if any, did she have either before she married you or the early years of your marriage?

A. She was with Payne-Weiner, a brokerage house. She was one of two investment counselors, two women counselors in New York.

Q. One of two women investment counselors?

A. That is right. And her school training was business administration.

Q. Do you happen to know whether she holds a real estate broker's license in the State of California?

(Testimony of Roy E. Hallberg.)

A. She holds a real estate broker's license in the State of California.

Q. You have stated that Mrs. Hallberg received no compensation for the services she performed in connection with [32] the receivership. What compensation, if any, did Mr. Harrison and Miss Findeisen receive for their bookkeeping duties?

A. Mr. Harrison received \$450.00 a month and Miss Findeisen \$300.00 a month.

Q. For how long, approximately, did Mr. Harrison serve as your bookkeeper?

A. About two months, approximately.

Q. And Miss Findeisen served for how long?

A. The balance of the term.

The Court: Were they same positions, that is, did the lady succeed Mr. Harrison or did she do a different type of work?

The Witness: She succeeded Mr. Harrison, to the same work.

Q. (By Mr. Whyte): Was that a full time bookkeeping job? A. It was.

Q. Drawing your attention again to Schedule A annexed to your "First and Final Report and Petition for Allowance of Fees", I believe you stated on your direct examination before the noon recess that this Schedule was prepared by Miss Findeisen and Mrs. Hallberg, is that correct?

A. That is correct.

Q. Do you know, of your own personal knowledge, whether or not that Schedule was prepared from the books of account [33] kept by the Receiver, or was that Schedule prepared from—

(Testimony of Roy E. Hallberg.)

Mr. Enright: Just a minute. May I have your last part——

Mr. Whyte: If I may withdraw the question, I will frame it again in a clear enough tone of voice so we will all understand it.

Q. (By Mr. Whyte): Drawing your attention to Schedule A annexed to your Report and Petition for Fees, the Schedule is headed "Inventory of All Known Assets and Properties Constituting a Part of the Former Richman Trust Over Which the Receiver Assumed Possession, Custody and/or Control", my question to you is, did you receive from Mr. Richman receipts showing the assets and properties of the former Richman trust which he surrendered to your possession, custody and/or control?

A. He listed all these, all the items that he gave over to me, and I signed a receipt for them. They all were included with the exception, as I believe I mentioned before, that the file that pertained to the Parapet controversy with the City Building Department at one of the buildings, that was received by me some time in January. In other words, I did not get all of the files, apparently, at the time I took over the buildings, or the management of these buildings.

Q. Speaking now only of the receipt which you said you signed, and in connection with the delivery by Mr. Richman to you of the assets and properties of the former Richman trust, [34] were all of the items listed on this Schedule A, with the excep-

(Testimony of Roy E. Hallberg.)

tion of the Parapet file you have referred to, itemized on those receipts?

A. Yes. The files consisted of various and sundry papers, and there were any number of files there. I did not go through each individual file, to see whether it pertained to that particular file heading that was on the file.

However, I assumed they were, inasmuch as he had taken them right out of his file there and out of his own records, that they did pertain to those buildings. But actually this was all information regarding earlier transactions.

Q. Were those receipts prepared in Mr. Richman's office, if you know?

A. The original receipt was prepared in Mr. Richman's office, and I signed it.

Q. Did you check the properties and assets turned over to you against the receipts, to determine whether or not you received all of the assets and properties shown on the receipts?

A. As far as I could, I did, yes.

Q. Is it your testimony that the only item which you received that is not shown on the receipt is a file with reference to the Parapet at the Oliver Cromwell?

A. That is the Canterbury.

Q. The Canterbury? [35]

A. That is right, that was the only one.

Q. Now, are you able to state whether or not this Schedule A annexed to your report and petition, which you have testified was prepared by Miss Findeisen and Mrs. Hallberg, was prepared on the

(Testimony of Roy E. Hallberg.)

basis of the receipts furnished you by Mr. Richman? A. They were, definitely.

Q. You say they were. You mean——

A. Schedule A was prepared from the original file which I signed and checked as far as I could, and turned over to the subsequent management.

Q. When you say the original file that you signed, do you refer to the original receipts which you signed?

A. The original receipts which I filed, yes—which I signed.

Q. Thank you. Directing your attention further to Exhibit B, or, rather, Schedules B, C, and D attached to your Report and Petition for Allowance of Fees, first directing specific attention to Schedule B, which is headed "Schedule of Receipts and Disbursements of Roy E. Hallberg, as Receiver of the Assets of the Former Richman Trust from December 1, 1953, to and including February 28, 1954," to that Schedule is attached several exhibits, being Exhibit I, Exhibit II, Exhibit III and Exhibit IV.

Are you able to tell us who prepared that Schedule B? [36]

A. That was prepared by Mrs. Hallberg and Miss Findeisen from the books and records which we had in the office.

Q. Will you briefly describe what those books and records consisted of?

A. They consisted of cash receipts, cash disbursements and general ledger.

(Testimony of Roy E. Hallberg.)

Q. Did you have a journal of any kind?

A. There was a journal there that had been kept up, yes.

Q. Did you continue to keep up a journal during your period of—

A. Kept a journal up to the end of the year, so we wouldn't be breaking the accounting records for the calendar year.

Beginning January 1st we changed the system a little bit, so that we could more adequately make comparisons.

Q. Then what did the books and records of the receivership consist of after January 1, 1954?

A. Well, it consisted of a cash receipts and cash disbursements book and the general ledger.

Q. Were you the custodian of those records, that is to say, were they kept in your possession and under your control? A. They were.

Q. Were those records kept in the regular course of the business of the receivership? [37]

A. They were.

Q. Were the entries made in the ledger and the cash receipts and disbursement books made at substantially the same, at substantially the same time as the transactions which they purported to reflect?

A. They were up to a point. After the first of the year Mr. Harrison began making entries on working sheets and was not transferring them to the ledger, which he had not succeeded in setting up.

Although we had the rough ledger set up he con-

(Testimony of Roy E. Hallberg.)

tinued to use working sheets and pencil notations, which I changed when we—when Mr. Harrison was terminated, when his work with us was terminated, and within a short period we got everything in order and brought it up to date.

Q. About when were the entries made by Mr. Harrison, on the work sheets you have mentioned, transferred to the original books of account?

A. In February.

Q. 1954? A. Correct.

Q. Calling your attention now to Schedule C attached to your Report and Petition, which Schedule is headed "Disbursements Made by the Receiver as Directed by the Court Covering Liabilities Incurred Prior to February 28, 1954, but Not Paid Until After That Date", who prepared that [38] Schedule, if you know?

A. Mrs. Hallberg and Miss Findeisen.

Q. Was that Schedule also prepared on the basis of the books of account kept by the receivership?

A. Books of account, the invoices that came in and records that we had there in the office.

Q. With reference to this caption on Schedule C, "Disbursements Made by the Receiver Covering Liabilities Incurred Prior to February 28, 1954, but Not Paid Until After That Date", why were the items listed on this Schedule not paid until after February 28, 1954?

A. We hadn't received a lot of the invoices on these, on the items represented in this Schedule, until after February 28th. And we paid those from

(Testimony of Roy E. Hallberg.)

moneys we had on hand after a discussion with you and Judge Tolin, and they were later paid.

Q. Is it a fact that the items listed on Schedule C are items reflecting materials delivered or services rendered to the receivership on or prior to February 28, 1954? A. They are.

Q. Now, with reference to the phrase in the title to the Schedule, "As Directed by the Court", did you have any conversation with the court in regard to the payment of those items?

A. I did. [39]

Q. Will you please state when that conversation took place?

A. That conversation took place either the Sunday following the termination of the receivership or the week following. I believe it was on the Sunday, the 28th of February.

Q. Perhaps I can refresh your recollection, Mr. Hallberg. Do you recall that I came down to visit you and Mrs. Hallberg at Corona Del Mar for a Sunday of golf at your home? A. Yes.

Q. Do you recall that I visited you there on Sunday, March 7th?

A. Yes, Sunday, March 7th, because you were there at the time I talked to the Judge.

Q. This conversation you had with the court, was that in person or over the telephone?

A. It was over the telephone.

Q. Please state what was said with reference to the payment of these items listed on Schedule C?

A. There are a number of items there that were

(Testimony of Roy E. Hallberg.)

indebtedness incurred during the month of February and which I felt I was personally responsible for. I phoned Judge Tolin and asked him whether I should go ahead and pay these bills with the moneys I had on hand. He so advised me.

Q. When you say "he so advised me", did he advise you [40] to pay them?

A. He advised me to pay them.

Q. Now, directing your attention to Schedule D annexed to your Report and Petition, which is headed, "List of all Known Creditors of the Former Richman Trust with Names, Addresses and Amounts of Claims, including both Specific and Contingent Claims, as of March 10, 1954," who, if you know, prepared that Schedule?

A. Mrs. Hallberg and Miss Findeisen.

Q. Was that Schedule also prepared on the basis of the entries made in the original books of account kept by the Receiver?

A. I do not—Inasmuch as we were operating these books on a cash basis, I do not believe they are reflected in the records. The only time they get into the record is when you pick them up as an accrual or pay them by cash.

Mr. Whyte: At this time, having laid the foundation, I believe, for the admission in evidence of the "First and Final Report of Receiver and Petition for Allowance of Fee to Receiver" filed herein on March 18, 1954, I now offer in evidence that document.

Mr. Enright: Objection is made to the pleading,

(Testimony of Roy E. Hallberg.)

the first 14 pages of pleading. There is no objection made to the Schedules themselves, itemization.

The Court: The Schedules will be received. The first [41] pages being largely pleading matter, I think we had better not receive them.

Mr. Whyte: May I address the court for a moment in that connection?

The Court: Yes.

Mr. Whyte: I believe the witness has testified that each and all of the matters alleged in the first 14 pages, except as to those matters on information and belief, about which he testified separately, are true, and that he was now able to testify here on the witness stand, under oath and subject to cross examination, that each and all of those matters set out are true as of his own knowledge.

He has further testified that each and all of the matters set forth in that Report and Petition, on information and belief, that he is willing to swear today on the witness stand, under oath, subject to cross examination, are true according to his best information and belief.

It seems to me that that furnishes a foundation for the admission in evidence of everything mentioned in the Report. Otherwise, I would have to ask him about each individual item separately.

The Court: I think it does. Of course, it does contain many things which are semi-argumentative and does state a number of conclusions, but it is a report. It is a report from an officer of the court to the court. [42]

(Testimony of Roy E. Hallberg.)

I will reverse myself, Mr. Enright. I think the whole thing is admissible. It will be received.

Mr. Whyte: Thank you, your Honor. I should like to ask some questions concerning the number of individual apartments and the range of rentals at each of the five apartment houses which form the principal part of the assets of the former Richman trust.

Q. (By Mr. Whyte): First, with reference to the Canterbury Apartment Hotel, located in Hollywood, California, are you able to state how many individual apartments were contained in that apartment hotel?

A. May I look at a note I have?

Q. Surely, you may refresh your recollection.

A. The first one is the Canterbury.

Q. That is true.

A. 90 apartments. They range from \$65.00 to \$175.00.

Q. By that you mean that the lowest apartment, lowest-priced apartment at the Canterbury rents for \$65.00 and the highest-priced apartment rents for \$175.00?

A. That is correct.

Q. Next, with reference to the Fountain Manor Apartment Hotel, located in Los Angeles, California, are you able to state how many individual apartments are contained in that building?

A. There are 91 apartments, and those rents range [43] approximately from \$65.00 to \$135.00.

Q. Will you please give us the same information with regard to the Oliver Cromwell, the West-

(Testimony of Roy E. Hallberg.)

ern Arms and the LaLoma Apartment Hotels, all located in Los Angeles, California?

A. The Oliver Cromwell has 94 and their rates range from \$45.00 to approximately \$115.00.

The Western Arms, 76 apartments, and approximate range is from \$50.00 to \$95.00.

LaLoma, 55 apartments, with the approximate range of \$45.00 to \$57.57.

Q. As to each of the five apartment houses, is it your testimony that those rental ranges which you have mentioned are approximate figures?

A. Yes, because—Well, they are.

Q. Mr. Hallberg, during your tenure of office as Receiver, did each of the five apartment buildings have a separate resident manager?

A. They did.

Q. What compensation, if any, did those separate resident managers receive from the trust estate?

A. They were paid a salary plus an apartment.

Q. Were those managers subject to your direction and control as Receiver of the properties constituting the former Richman trust?

A. They were. [44]

The Court: How were they paid? Of course, Mr. Hallberg don't know how those managers were paid prior to the trust.

Did the trust bear the expense or did that come out of the fee that was paid to Mr. Richman?

Mr. Enright: The trust paid their expense, the

(Testimony of Roy E. Hallberg.)

same identical arrangement as carried on by the Receiver; no change at all by the Receiver.

The Court: Thank you.

Q. (By Mr. Whyte): During your tenure of office as Receiver were you responsible for the employment of personnel and their discharge, if that became necessary? A. I was.

Q. Did you find it necessary on any occasion to discharge an agent or employee of the receivership? A. Yes, I discharged Mr. Harrison.

Q. During the course of your tenure of office as Receiver, were you charged with the duty of planning the accumulation of moneys from the receivership properties to meet substantial current obligations, such as taxes or insurance?

A. I took over the properties, and there was a question whether or not we would be able to meet the tax payment that had to be made in December. We succeeded in meeting the payment, and although it left us very short for operating moneys, we managed to carry on. [45]

Q. Did you then plan the accumulation of moneys from the receivership in the form of rents from these apartment houses or other properties in such a way as to meet current obligations of the receivership as they became due?

A. As much as we were a little short on cash, we had to plan everything.

Q. What, if anything, did you do about the insurance policies covering the five apartment buildings?

(Testimony of Roy E. Hallberg.)

A. Well, insurance policies that were in force were allowed to continue. When a policy expired I placed the insurance with a company who had a lower rate by 10 per cent over the standard rate, plus a dividend of approximately 25 per cent, which would be rebated or the dividends would be paid to the receivership or the trust at the expiration of those policies.

Q. What type of an insurance policy was that, Mr. Hallberg?

A. Those are fire insurance policies.

Q. Did you negotiate a new fire insurance policy with this company you have mentioned on all of the apartment buildings in the trust estate?

A. No, sir, I placed it with the LaLoma and also for the Oliver Cromwell.

Q. What, if anything, did you do with reference to the compensation insurance policies covering the respective [46] apartment buildings?

A. The policy had, or the—yes, the policy had been issued and a payment made. I stopped the payment on the check with the full knowledge, or, the full knowledge of the insurance broker, because it included some items that were Mr. Richman's personal items; we rewrote it.

Q. What items were those?

A. Oh, I think there was an automobile connected with it and some servants.

Q. Are you telling us that some of Mr. Richman's domestic servants and his automobile and other personal items were included in the compen-

(Testimony of Roy E. Hallberg.)

sation policy covering one or more of these five apartment buildings at the time you took over this receivership?

A. Those items had to be taken out and we re-wrote the policy, and it was placed with the same broker.

Q. When you say "placed with the same broker", by that you mean a new policy was written with the same company and broker as——

A. That is correct.

Q. ——previously? A. That is correct.

Q. As to each of these questions I am directing to you, regarding what you did in connection with the receivership, are you answering as to something that you did in person, [47] Mr. Hallberg, and not through an agent?

A. What are you referring to?

Q. For instance, when I have asked you about these insurance negotiations that you had, did you do that personally?

A. Yes, I did that personally.

Q. Now, did you inspect the five apartment buildings from time to time, to determine if their physical plants were in good working order?

A. I certainly did inspect them, and as far as I could ascertain, I checked the physical property.

Q. When you say you checked the physical property, what do you mean? Did you look at the boilers?

A. I went down to the boilers, refrigeration equipment and structures.

(Testimony of Roy E. Hallberg.)

Q. Did you look at the water heaters?

A. Looked at the water heaters, yes.

Q. Did you look at the basements?

A. I certainly did.

Q. Did you examine any of the vacant apartments to see if——

A. I certainly did. I visited many a vacant apartment.

Q. You did that with reference to all five of the apartment houses?

A. I was in vacant apartments in all five buildings. [48]

Q. Did you examine the boilers, the refrigeration systems, the heaters and the basements in all the five apartment buildings?

A. I certainly did.

Q. What, if anything, did you do with reference to the repair of refrigeration equipment at the Western Arms?

A. Western Arms, about the middle of January—I am not positive of the exact date at this time—they had a box that refused to operate, turned cold. The manager, as she had been instructed, called the California Refrigeration Company. The California Refrigeration Company had been handling the buildings for quite some time prior to my taking over, and they went to work on it and they worked all day.

Mrs. Hallberg was on—in the building twice during that day and spoke to them.

(Testimony of Roy E. Hallberg.)

Mr. Enright: May it please the court, I assume the witness——

Q. (By Mr. Whyte): I am asking for what you did, Mr. Hallberg.

The Court: Yes. We can't take from you what Mrs. Hallberg said.

Mr. Enright: I assume that the witness has so far testified what he actually did or saw. If not, I would prefer that his testimony be stricken.

Q. (By Mr. Whyte): Proceed, Mr. Hallberg, and confine [49] yourself to what you did or saw personally.

A. The report came in to me that evening that we were having difficulty with that building. I was told that the refrigeration people were on the job.

The following morning I found that they had let all the gas out of the refrigeration system. It is a flooded system. Why they let all the gas out—Well, that is really a question.

It seems to be a difference of opinion as to the respective merits of emptying all the gas out, although some companies will pump the gas into a receiver and retain it and let it back into the system again.

I found out that the men who were repairing it had choked off or had cut out about eight boxes before they finally had the entire system down. And I also found out that the manager of the building had overheard the telephone conversations between the workman and his office. Apparently, he didn't know what to do with it.

(Testimony of Roy E. Hallberg.)

I got that information the following morning. And the manager of that apartment building had called in another refrigeration company, to check and see what could be done.

In the meantime the original company, California, had given us an estimate of approximately \$900.00 to repair the system, without giving us a guaranty. The other firm said they could get that, could get this in working order at a [50] good deal lower cost, and I gave them instructions to go ahead.

The first company wanted to do, wanted to know what to do, and I had a conference with both of them, with both refrigeration companies, and I told the second one, whose name I believe is the Normandie Refrigeration Company, to go ahead and finish the job at a considerably lower figure and without having the system tied up for the length of time the first company said they would do it, they would have to have it tied up.

Q. On this matter of your inspection of the boilers, the refrigeration system, the water heaters and the basements, physical plants, vacant apartments at these different apartment buildings, were you familiar with the workings of that type of physical plant from any previous experience which you had had? A. Oh, yes.

Q. Will you state what experience had qualified you for an appraisal of the operation of that physical part of the building?

A. Every one of the buildings we had in Chi-

(Testimony of Roy E. Hallberg.)

cago, when we were operating a receivership, had boilers, heating plants, hot water boilers, and I think I had a fair working knowledge of the plants.

Q. Are the buildings which you operated in Chicago, [51] that you have just averted to, are those the buildings in connection with the receivership in 1931 of a particular bank in Chicago, which you referred to in your deposition?

A. That is correct.

Q. Did you do anything about changing the accounting system which had been established and maintained under Mr. Richman's regime?

A. Yes, I did. I tried to set up a system whereby we could have direct comparisons, one building against the other, for a period of months, and also cross reference of your checks, so that they could be traced very quickly through your records, book records, and the name of the account to whom you paid, or the account to whom the checks were issued.

It was a little confusing to try to locate bills that have been paid prior to December 1st in the method they were kept. The bills were supposedly clipped together for a given building, but oftentimes a service was rendered to two or three buildings and if you wanted to find out which building—if you tried to find a bill for a given building, if it happened to be in conjunction with the payment of another building, you had considerable difficulty looking some of those bills up.

I changed that so it would be more easily found,

(Testimony of Roy E. Hallberg.)

and we set up a record system which I think was quite adequate and simple, and gave a lot of information, without an awful lot [52] of research, if I may call it that in the record.

Q. Can you be a trifle more specific on this point: Is it the fact that under the accounting system kept by Mr. Richman that the profit and loss of the entire five apartment buildings was reflected as a whole only, or were you able to tell from the accounts kept by Mr. Richman what was the profit and loss from each individual apartment building?

A. It would take quite a bit of work to get that information out. You would have to analyze the accounts first.

Q. When you changed the accounting system in the manner you have described, was it possible to tell easily and quickly what profit or what loss had been sustained from each individual apartment building?

A. Yes, with one exception. There was a question as to whether certain expenditures, which had been carried into the improvement account, should have been classed as improvements. I know why it was done, but from purely—from a truly accounting standpoint some of the expenditures were written into the improvement account, which I personally do not believe should have been placed in that account.

I know why it was done. There was a reason for it. But because of that you would have a little difficulty arriving at a quick decision as to the amount

(Testimony of Roy E. Hallberg.)

of profit and loss, because some of the expenditures for painting and things like [53] that definitely, in my opinion, were expense and should not have been capitalized.

Q. Then can you briefly summarize for us, in a few words, the advantages which accrued from your system of bookkeeping instituted under your regime as Receiver, as compared with the system of bookkeeping you found when you took office?

What were the advantages that were obtained through the change in accounting you instituted?

A. Well, I believe that with my system—of course, in two months you are not going to be able to tell much, but over a period of time these records would have reflected a comparative month-by-month report of the operation of this individual building.

Actually, what you want records for is to be able to see whether you are making money on the individual buildings, to see whether or not it is economically feasible or sound, to see from an economic point of view you are working in the right direction, so you are making money.

Q. Did you instruct the bookkeepers, Mr. Harrison and Miss Findeisen, in regard to the method of setting up the new accounting system?

A. I had a little difficulty getting Mr. Harrison to see how this should have been handled. He finally agreed it probably was a better way of handling it, but he had a habit of making all his entries—— [54]

(Testimony of Roy E. Hallberg.)

Q. Mr. Hallberg,—— A. Pardon me.

Q. ——We want to keep this responsive.

A. All right.

Q. My question was, did you instruct Mr. Harrison and his successor, Miss Findeisen, in the matter of setting up and maintaining this new book-keeping system, which you have mentioned?

A. I did.

Q. During the course of the receivership, did you personally ever assist actively in the bookkeeping duties? A. I did.

Q. What training and experience had you had with regard to bookkeeping?

A. Well, I worked for J. L. Maulpey when I was going to school, doing public accounting.

Q. What did you major in at college?

A. I was in the school of business administration.

Q. At what school?

A. Northwestern University.

Q. What degree did you receive there?

A. Bachelor of Science and Commerce.

Q. What year did you receive that?

A. 1927.

Q. During this course of receivership in Chicago you [55] mentioned, did you have anything to do with the books governing the operation of the various properties in that receivership?

A. I did.

Q. What was your connection with those books?

A. I helped set up the original accounts, the

(Testimony of Roy E. Hallberg.)

original records, and had a full time bookkeeper who carried it on.

Mr. Whyte: In order that the record may be complete, I think this is as good a time as any to offer in evidence the whole of Mr. Hallberg's deposition, pursuant to Rule 26 of the Federal Rules of Civil Procedure. I so offer the entire deposition in evidence at this time.

The Court: Have you had a chance to look at it?

Mr. Enright: No, I did not have a chance during the noon recess. I understood it was offered earlier subject to my making a motion as soon as I have a chance to examine it.

The Court: You wish to have an opportunity to read it further before the court rules on the offer?

Mr. Enright: Yes, I would, your Honor.

The Court: All right. We will take the offer of the deposition under submission.

Mr. Whyte: Thank you, your Honor. May I state that I will be through with Mr. Hallberg's direct examination shortly.

I would like, if possible, to put on an expert witness as to the reasonable value of his services, who is here in the courtroom, if Mr. Richman would waive his cross examination [56] of Mr. Hallberg, until after the expert has testified.

Mr. Enright: Yes.

Mr. Whyte: Would that be convenient, Mr. Enright, to you?

Mr. Enright: Well, I will convenience you.

Mr. Whyte: So I offer the deposition for the

(Testimony of Roy E. Hallberg.)

purpose of having the foundation in the evidence for the testimony of the expert witness whom I will put on a few minutes, as to the reasonable value of the services.

I would like, if possible, to have that deposition in subject to whatever motion to strike the court may wish to entertain.

The Court: Under these circumstances, we all know this Rule 26 will make some part of this deposition proper, and probably all of it; I don't know.

So it will be admitted subject to a motion to strike. By motion to strike, we can then weed out the extraneous parts of it.

Mr. Whyte: Thank you.

Q. (By Mr. Whyte): Did you petition this court for authority to pay Christmas bonuses to the employees of the former Richman trust?

A. I did.

Q. Was that petition granted?

A. It was. [57]

Q. Did you distribute bonus checks to those—Now, when I say “you”—Did your bookkeeper distribute bonus checks to those employees pursuant to the granting of that petition?

A. They were distributed, yes.

Q. Did you also petition this court for authority to renovate individual apartments in each of the five apartment houses?

A. I did.

Q. Did you appear in court personally upon

(Testimony of Roy E. Hallberg.)

the hearing of that petition and testify from the witness stand? A. I did.

Q. Was that petition for authority to renovate individual apartments granted? A. It was.

Q. Pursuant to the granting of that petition, did you personally carry out a program of limited renovation? A. I did.

Q. Will you tell us what you did in that regard?

Mr. Enright: I assume the question is what he did personally?

Mr. Whyte: That is right.

The Witness: I directed that certain of the vacant apartments that were pretty well worn, shall we say, be redecorated—not along the lines they had been painted— [58] but to make them a little bit more colorful, and to repair some of the broken tiles in some of the buildings. We had a lobby that had to be painted, and matters similar to that.

Q. (By Mr. Whyte): Did you ever check the rentals in the neighborhood of any of these apartment buildings? A. I did.

Q. In what particular neighborhoods did you make a check of comparative rentals?

A. Out around the Western Arms and the Oliver Cromwell. Also up at the Fountain Manor.

Q. Please tell the court what you personally did in checking the rentals in the neighborhood of the Western Arms.

A. I went in to one building south of the Western Arms and found it to be occupied by colored,

(Testimony of Roy E. Hallberg.)

about two blocks south, maybe a long block south. And there is a building directly behind it, and I went in there and checked the rentals there.

Q. All right. Tell us what you did with respect to checking the rentals in the neighborhood of the Oliver Cromwell.

A. I went into buildings on the street and the street behind, both near to Wilshire and north of the building, on streets adjacent to Normandy.

Q. When you say you went in those buildings, did you ascertain what rents were being charged at those locations? A. That is right. [59]

Q. Please tell us what you personally did in regard to appraising the rentals in the neighborhood of the Fountain Manor.

A. I went in one building south there. I directed Mrs. Hallberg to check some of the others in the area. And we got a fair idea of that locality.

Q. Did you do anything in regard to the tax returns to be filed by the receivership estate?

A. Yes. That is the fiduciary return.

Q. Please tell us what you did in that connection toward preparing and filing that return.

Mr. Enright: To which objection is made on the ground the return is the best evidence. Apparently, there is some uncertainty whether the return is available any more.

The Court: What he did with respect to preparation of it would bear upon the service he rendered. Objection overruled.

The Witness: I went—made two calls on the De-

(Testimony of Roy E. Hallberg.)

partment of Internal Revenue. Miss Brun was contacted, who is in charge of the particular department, and she made the suggestion that the return be carried out along the manner of previous returns; that was done.

Q. (By Mr. Whyte): Directing your attention to Schedule B attached to your Report and Petition for Fees, can you point out to us on this Schedule whether it reflects the total or gross receipts received from receivership properties [60] during the three-month period of your receivership?

A. Inasmuch as these—as the buildings are operated on a cash basis, the total receipts here are the amounts of money we received.

Q. On page 2 of Schedule B there is a notation, "Total Receipts for Period from December 1953 to and including February 28, 1954". And following that there is a breakdown for the Canterbury, Fountain Manor, LaLoma, Oliver Cromwell, Western Arms, Other, and then a total figure of \$94,153.59.

What does that figure, which I have just quoted, reflect?

A. That reflects the receipts during the three-month period.

Q. Does that figure include the rentals for February 26th, 27th and 28th from one or more of the five apartment houses?

A. Well, without the records it is pretty hard to state at this time whether some of these rents

(Testimony of Roy E. Hallberg.)

were received on the last day of—that we collected rents were for the month following or whether they were for that month and a little bit delinquent in coming in.

Q. Mr. Hallberg, you operated on a cash receipts and disbursements basis, did you not?

A. Yes.

Q. Then this figure \$94,153.59 represents cash [61] actually received during the three-month period of the receivership, is that correct, sir?

A. That is correct.

Q. Do I understand your testimony to be you cannot state definitely at this time whether that total includes the rents from the five apartment houses or one or more of them for February 26th, 27th and 28th?

A. No, it would be pretty hard to tell.

Mr. Whyte: I have no further questions for the direct examination of Mr. Hallberg, your Honor.

The Court: Then we will take a brief recess, after which we will hear your expert witness, and then return to Mr. Hallberg for a cross examination.

Mr. Whyte: Thank you.

(Witness temporarily withdrawn.)

The Court: We will take a 10-minute recess.

(Short recess taken.)

Mr. Whyte: I have one or two short questions to ask Mr. Hallberg, if I could recall him, please.

The Court: Yes.

ROY E. HALLBERG

called as a witness in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows: [62]

Direct Examination—(Continued)

Q. (By Mr. Whyte): Immediately before the recess I asked you whether or not the rents for February 26th, 27th and 28th were included in this total receipts figure of \$94,153.59 shown on Schedule B attached to your report, and I understood you to testify that you could not be certain whether they were included or were not included.

Calling your attention to a footnote on the second page of Schedule B, preceded by an asterisk and reading, "Receipts for the month of February include those only for 25 days", does that refresh your recollection as to whether or not February 26th, 27th and 28th receipts, rental receipts were included in the figure of Ninety Four Thousand Odd Dollars?

A. The three days you refer to were not included in these figures, and the asterisk with the explanation there takes care of that. That was in there to explain it.

Mr. Whyte: All right. No further questions.

(Witness temporarily withdrawn.)

Mr. Whyte: Mr. Jefferson Mann.

JEFFERSON A. MANN

called as a witness on behalf of the Receiver, being first duly sworn, testified as follows:

(Testimony of Jefferson A. Mann.)

The Clerk: Please be seated. Your full name, sir.

The Witness: Jefferson A. Mann. [63]

Direct Examination

Q. (By Mr. Whyte): Where do you reside, Mr. Mann? A. In Glendale, California.

Q. What is your business address?

A. 624 Security Building, 510 South Spring Street, Los Angeles.

Q. In what business are you engaged?

A. I am a licensed real estate broker and real estate appraiser.

Q. For how long have you been engaged in the State of California in real estate sales or activities connected with real estate?

A. Since 1933, which is 21 years, with the exception that prior to that time I engaged in some real estate activities on my own account.

Q. Were you at any time ever connected with R. A. Rowan & Co.? A. I was.

Q. What is R. A. Rowan & Co.? What is the nature of their business?

A. R. A. Rowan & Co. real estate concern, which has been operating for over 50 years. Their office is located in the Rowan Building at 5th and Spring Streets, Los Angeles. Their principal business is the sale, leasing, management and [64] the insurance business. They manage, the last time I heard the records, some fifty-five hundred units of property of all kinds. They specialize particularly

(Testimony of Jefferson A. Mann.)

in income properties of all kinds, and industrial.

Q. Are you able to tell us how R. A. Rowan & Co. companies in size with other real estate companies in the city?

A. To the best of my knowledge they are the largest management company, real estate management company in the West. I think they are second in size in the volume of sales and leases in the West.

Q. When did you join that organization?

A. July 15, 1933.

Q. For how long did you remain in their employ?

A. Until September of 1953, with two exceptions. In 1937 I was hired by the General Petroleum Corporation, in their Real Estate Department, for some special activity. And in 1939 I returned again to Rowan & Co.

In 1942 I was loaned to the United States Government, U. S. Corps of Engineers, Real Estate Division, for the purpose of acquiring various properties for use of the Army during the war period.

I returned to Rowan & Co. in December of 1945 and continued there until I went into my own activities in September of 1953. [65]

Q. What was the nature of your duties while you were employed by Rowan & Co.?

A. I sold, leased, rented, inspected, appraised, obtained management properties. I am also a licensed real estate—insurance solicitor. My chief

(Testimony of Jefferson A. Mann.)

activities were the sale, leasing and appraising of real property.

Q. Can you tell us some of the concerns for whom you sold or appraised or leased real property in this area?

A. I have appraised property for various government bodies, such as the Federal Housing Authority, United States Government, State of California, both the Highway Division and Finance Division, Corporation Commissioner, the R.F.C., the University of California.

I have appraised property for and appeared before the Income Tax Division, testified in the Superior Court, Federal Court, appraised property for the Los Angeles Realty Board, Chamber of Commerce, American Red Cross and various banks, such as Security Bank, Citizens National Trust & Savings Bank, Trust Department, and for the bank itself, and Farmers & Merchants Bank, Wells Fargo and Union Trust Company of San Francisco. I have appraised for various oil companies, such as the General Petroleum, Texaco, MacMillan Petroleum, Fullerton Oil, Century Oil, various railroads, and appraised for many corporations.

I have leased or sold to many corporations. I have [66] been appointed by Superior Court as referee, by Superior Court Judge Thurmand D. Clarke. I have appraised various estates, such as the banking estate of William A. Garland Estate, the Dory Lankershim Estate, the Lulabell Lloyd, deceased wife of Ralph Lloyd, and the Lankershim

(Testimony of Jefferson A. Mann.)

Estate. I have appraised land and properties for the Rodeo Land & Water Company of Beverly Hills, the Janss Investment Company of Beverly Hills, the Janss Real Estate Company and the Auto Club of Southern California, and many, many others.

Q. You mentioned that from about '42 to 1944 you were with the United States Army Engineers in their Real Estate Division?

A. That is correct.

Q. What type of service did you perform for them?

A. The acquisition for use by the U. S. Government of all types of government land in southern California, south of San Luis Obispo, Arizona, Nevada, and as far south as the Mexican line in Arizona, and in California. That constituted all types of properties, from airport landing fields to small lots for use of barracks or balloon sites, large warehouses; all types of properties.

Q. Are you familiar with apartment buildings, Mr. Mann? A. I am.

Q. What has been your experience with them?

A. I have sold large apartments. I have appraised a [67] number of them.

Q. Mr. Mann, please assume the following facts:

On November 30, 1953, by order of this court, Roy E. Hallberg was appointed Receiver of all the real and personal property constituting the former Richman Trust. On December 2, 1953, he posted a bond in the sum of \$75,000 to insure the

(Testimony of Jefferson A. Mann.)

faithful discharge of his duties as Receiver. On or about the same date he took possession of the following properties constituting the principal assets of the former Richman Trust, to wit: five apartment houses, being the Canterbury Apartment Hotel located in Hollywood, California, and the Fountain Manor Apartment Hotel, the Oliver Cromwell Apartment Hotel, the Western Arms Apartment Hotel and the La Loma Apartment Hotel, all located in Los Angeles, California.

The Canterbury Apartment Hotel contains 90 individual apartments whose rents range from approximately \$65.00 to \$175.00.

The Fountain Manor Apartment Hotel contains 91 individual apartments whose rents range from approximately \$65.00 to \$135.00.

The Oliver Cromwell Apartment Hotel contains 94 individual apartments whose rents range from approximately \$45.00 to \$115.00.

The Western Arms Apartment Hotel contains 76 individual apartments whose rents range from approximately \$50.00 to [68] \$95.00.

The La Loma Apartment Hotel contains 55 individual apartments whose rents range from approximately \$45.00 to \$57.50. The fair market value of these five apartment buildings is approximately \$1,200,000.00.

A brief summary of the Receiver's education and previous business experience is as follows:

He was graduated from Northwestern University in 1927 with the degree of Bachelor of Science in

(Testimony of Jefferson A. Mann.)

Commerce. During the year 1931 he managed from 40 to 50 buildings of different types ranging from residences up to large apartment buildings, the largest being an apartment hotel containing 60 apartments, in connection with the administration of a receivership in Chicago, Illinois.

He was later employed for a number of years by the Garrett Company in New York, who are grape growers and vintners, their principal office being located in New York, N. Y. During the last three or four years of his employment with this concern, which ended on or about January 1, 1948, he occupied the post of Eastern Sales Manager and received a net compensation of \$40,000.00 per year.

Shortly after January 1, 1948, he came to southern California where he has resided continuously until the present date. While living in southern California he has owned and actively engaged in the management of apartment houses and [69] other residential properties located in this area. He has also engaged in various business ventures while residing in southern California.

Mr. Hallberg's tenure of office as Receiver of all the real and personal properties constituting the former Richman Trust continued from on or about December 1, 1953 to and including February 28, 1954. During that period he supervised the management and operation of the five apartment hotels previously mentioned.

Each of these apartment hotels had a resident

(Testimony of Jefferson A. Mann.)

manager operating under the Receiver's direction. These managers received their compensation from the receivership assets. The Receiver also employed a full time bookkeeper in connection with the operations of the former Richman Trust, who was paid a monthly salary from the former trust assets.

The Receiver was also assisted by his wife, Mrs. Hallberg, who collected the rents from each of the five apartment buildings at least three times a week and deposited them in the Receiver's bank account. Her duties also included supervising the renovation and decorating of the individual apartments. Mrs. Hallberg received no compensation from the estate. She is a graduate of the University of Minnesota, and in the early 1940's was one of two women investment counselors in New York, N. Y. She also holds a real estate broker's license in California. [70]

Throughout the three-month period of the receivership, the Receiver was responsible for the employment and discharge of receivership personnel. In this regard, in February, 1954, he discharged the bookkeeper first employed by him and hired a new bookkeeper. He was likewise charged with the duty of planning the accumulation of monies from receivership properties to meet substantial current obligations such as taxes and insurance premiums.

During the course of his term of office as Receiver, he reviewed all types of insurance carried on the five apartment buildings above mentioned. In this connection he negotiated some new insur-

(Testimony of Jefferson A. Mann.)

ance coverage, thereby obtaining for the trust a discount of 10 per cent on the standard rate of the fire insurance policy covering the Oliver Cromwell, plus a 20 per cent-25 per cent dividend at the expiration of this policy.

From time to time he inspected the various apartment buildings, paying particular attention to the boilers, refrigeration systems, water heaters, basements, etc. In this connection he supervised a major repair of the refrigeration equipment in the Western Arms, and selected a new concern to supply refrigeration service at this apartment hotel. He also made decisions respecting the proper method of upkeep and/or replacement of plumbing at the Fountain Manor.

He supervised the establishment of a new accounting system for the above mentioned apartment buildings, and [71] instructed the bookkeeper in the proper method of maintaining this system of accounts. During the course of the receivership, he frequently actively assisted in the bookkeeping duties.

On one occasion he petitioned this court for authority to pay Christmas bonuses to employees of the former Richman Trust, which said petition was granted. On another occasion he petitioned this court for authority to renovate individual apartments and testified personally in connection with the hearing thereon. This petition for authority to renovate was also granted on or about January 15, 1954, following which the Receiver carried out a

(Testimony of Jefferson A. Mann.)

limited program of renovating individual apartments.

In order to determine whether the rentals being charged at the various apartment buildings were adequate, he surveyed the areas in the neighborhood of the Western Arms, Oliver Cromwell, and Fountain Manor to determine the comparative rents being charged in nearby apartment buildings.

In order properly to prepare a fiduciary income tax return covering the former trust properties, he conferred with employees of the Director of Internal Revenue regarding the tax status of the former Richman Trust, and assisted the bookkeeper in preparing such return.

During the three-month period of the receivership, the gross income from the receivership assets was approximately [72] \$95,000.00.

On the basis of these facts, do you have an opinion, Mr. Mann, as to the reasonable value of the Receiver's services in connection with his administration of the business and affairs of the former Richman Trust? A. I do.

Q. What is your opinion?

Mr. Enright: Pardon me just a minute, please. To which objection is made, first, upon the ground the subject matter is not one of expert opinion.

Secondly, upon the ground that the witness testified to no experience as to apartment house management, he having testified, in stating his qualifications, that he had obtained management property.

(Testimony of Jefferson A. Mann.)

He has testified to no experience of his own, to the management of similar properties.

Thirdly, the hypothetical question misstates much of the evidence as of this time.

The Court: The hypothetical question, I think, is properly phrased. Of course, there might be different facts put in a different hypothesis, or some of the facts herein stated left out, but that would be for your hypothetical question, Mr. Enright.

The witness, I don't think, has stated sufficient familiarity with the compensation usually paid for services of this particular character. He has told us he was with [73] Rowan & Co., that Rowan & Co. handle a highly diversified type of property, and we know, from just acquaintance in the community, that they handle properties of the character that are involved here.

But whether this witness has any knowledge of what fees are charged for the handling of properties of the type named here, when they are handled by Rowan & Co. or by others, I don't think we have been told.

I think you had better lay a little further foundation in that respect.

Now, as to the objection to this as being not a subject for expert testimony, we are confronted with the problem that an officer of the court, acting as a Receiver, acts on a different basis than a person seeking employment in a competitive field.

Some of the cases say that being, in effect, in the public service, he must expect to not be compen-

(Testimony of Jefferson A. Mann.)

sated as fully as if he were in private service. However, what is paid in private service is one of the things to be considered by the court in determining what the compensation should be.

So the objection is provisionally sustained, that is, it is sustained only as to the inadequacy of foundation.

Mr. Enright: May I take the witness on voir dire, as to his qualifications on the particular subject matter?

The Court: Yes. Let's have Mr. Whyte bring out what he [74] wishes to, and you can cross examine on that particular phase before he answers the question.

Q. (By Mr. Whyte): Mr. Mann, what familiarity, if any, do you have with the compensation paid in this area for property management, particularly with reference to apartment hotels?

Mr. Enright: Objection is made upon the ground his familiarity does not qualify him to express an opinion. His experience in the field might be a proper question.

The Court: Overruled.

The Witness: I have on many occasions obtained the rental—the management schedules in force on various properties, not only those handled by Rowan & Co., but I have been in many properties of which I have been requested and hired for compensation to appraise.

In the course of appraisement it was necessary to determine, in many instances, the compensation

(Testimony of Jefferson A. Mann.)

paid for the management of similar types of property.

I recently was personally responsible for bringing in to Rowan & Co., and negotiated contracts for the management of property of an income residential character, not as large an apartment, but a smaller apartment.

In my sales experience it was necessary to determine the net incomes of apartments, and in the course of determining those sources of net income it was necessary to have [75] all of the facts of what was paid to managers, to operators, to resident operators of apartment houses of this character.

Q. (By Mr. Whyte): Do you know whether or not the Los Angeles Realty Board has a schedule of management fees for property of this type?

A. They have.

Q. Are you familiar with those schedules?

A. I am.

Q. Do you have with you the most recent schedule issued by the Los Angeles Realty Board?

A. I have.

Q. With regard to management fees for apartment buildings?

A. I have.

Q. Directing your attention to the handbook which you have handed me, headed "Los Angeles Realty Board Handbook, Roster of Members, Code of Ethics, Schedule of Commissions", with the address of the Board at the bottom of the title sheet,

(Testimony of Jefferson A. Mann.)

can you tell me approximately when that handbook was issued? A. December 1, 1952.

Q. And are you able to state whether or not that is the latest handbook put out by the Los Angeles Realty Board covering those subjects?

A. To the best of my knowledge it is their last book. [76] I am a member of the Realty Board and am advised of these things, but this is the last schedule I have received.

Q. Will you turn to the page in that handbook which deals with the commissions for property management of such buildings as apartment hotels.

A. (Witness complies) The schedule as set forth for management of property fees for business properties, including hotel apartment houses and bungalow court buildings appears on page 13.

Mr. Whyte: I submit that a sufficient foundation has been laid now for the hypothetical question I put to this expert witness.

The Court: All right. Mr. Enright wants to question him before he answers.

You may do so.

Voir Dire Examination

Q. (By Mr. Enright): Is there any uniformity, Mr. Mann, in the nature of the services rendered by the property managers?

A. It varies according to circumstances.

Q. Some managers would furnish complete accounting monthly, is that correct, and other managers would not? A. That is correct.

(Testimony of Jefferson A. Mann.)

Q. And some managers would furnish complete bookkeeping records and others would not? [77]

A. Well, they all furnish bookkeeping records. They are all charged with producing monthly reports on all management property. That is part of the duties of a manager.

Q. And the manager pays for that service himself, the personnel in performing that service, in making the monthly report?

A. Not necessarily, no.

Q. Well, is there any uniformity at all as to who pays for that?

A. No, sir, there is not. It depends on the negotiated contract.

Q. You personally, I assume, have not acted as a property manager yourself at any time?

A. No, sir, I personally have not been charged with the operation of apartment houses. I was a Receiver in which there were two apartment houses in the receivership. It was one of my duties to know all of the facts and conditions surrounding that receivership.

Q. That was that particular case involving that particular two apartment houses and the activities of the persons interested in the apartment houses, isn't that right?

A. That was the one time I was directly in charge of the records and the conditions surrounding those apartments.

Q. You are familiar with the persons whose

(Testimony of Jefferson A. Mann.)

business is that of managing of property, apartment house property, [78] known as certificated property managers?

A. No, I do not know that concern.

Q. Certified property managers?

A. No, I do not know that concern, sir.

Q. Well, there is a board or a group of persons who carry on that business in Los Angeles and various parts of the United States that are certified as being qualified property managers? Are you familiar with that fact?

A. I am familiar with the Los Angeles Apartment House Managers Association, of which Mr. David Culver, a close personal business associate, was formerly the president. Mr. Sid Beach, I believe, is the president at the present time. That is the association I know of here.

I don't think I answered your question fully. I don't know the concern that you mentioned.

Q. Now, are you familiar at all with whether or not there is any uniformity of the services that are rendered by the apartment house property managers?

A. To a degree, there is a uniform service rendered. It is modified, depending on the particular circumstances.

Fundamentally, the services rendered are uniform to this degree: It is the duty of the manager to collect rents. It is the duty of the manager to maintain and make recommendations to an owner or under different circumstances to be the entire

(Testimony of Jefferson A. Mann.)

head of decision for what should be done on the [79] management of that property.

It is the province of a manager to see the bills are paid. Those are all uniform. It is proper function of a manager on a uniform basis to see that the apartments are maintained in proper condition, that they must—that the functions of the building must go on, such as refrigeration, elevator service, janitor service, if any, heating and those types of functions.

Those are more or less standard. It comes into a separate entity and an additional function when the manager is required to possibly handle the financial end. I mean by that renegotiation of contracts, renegotiation of loans, making major decisions as to alterations, and the function of preparing tax returns and other entities that become an additional function over the standard operations.

Q. Now, this realty board document you have before you, sir, on page 13, refers only to fees for managing apartment houses, and it specifies a particular percentage, doesn't it?

A. It does, sir.

Q. Now, that percentage specified there covers the service of the property manager in collecting the rents, doesn't it?

A. Yes.

Q. And he bears the expense of collecting those rents? [80]

A. That is correct.

Q. He bears the expense of preparing a monthly report or accounting of his management?

A. Yes.

(Testimony of Jefferson A. Mann.)

Q. And he bears the expense of negotiating the contracts for the painting or the decorating of the apartments?

A. Not necessarily, Mr. Enright.

Q. Then will you explain, sir, what is the amount specified there, 5 percent for the property manager?

A. The minimum charge of 5 percent of the monthly rents collected, where the collections do not exceed \$2,000.00 per month. Part B, "When the monthly rentals from the single tenants or the average monthly rentals from two or more tenants in the same building is over \$2,000.00, the charge shall be 3 percent."

Q. There is nothing in the book there that states what service will be rendered, though, for that 3 percent or that 5 percent, is there?

A. That is correct, sir.

Q. Have you any knowledge of any rule or regulation setting up these standards of ethics, as to what service will be rendered?

A. I have negotiated, as I said before, contracts between property owners and management associates, such as Rowan & Co. I have made many studies of those contracts in [81] the course of appraising various properties.

I have discussed the matter with management companies, other than Rowan & Co., as, for example, Benton Management Company and associates of that kind, to determine what is customary in a management contract.

(Testimony of Jefferson A. Mann.)

Q. Is it your opinion that the 3 percent for collections in excess of \$2,000.00 a month is reasonable or the going rate?

Mr. Whyte: Well, now, I submit that is going beyond voir dire. The voir dire was supposed to have been——

The Court: It is, yes.

Mr. Enright: Then I renew my objection.

The Court: May I ask a question? Are different rates charged for short term than for long term management, as, for instance, in this case that the court is now considering, we have an exact four month term.

Would there be a different rate within the calling for a short term, such as four months, than there would be for an annual or bi-annual contract, something of that kind?

The Witness: There would be, your Honor, for the definite reason that the cost of setting up the operation to handle properties such as we are talking about in this case is rather heavy. They have to assign men, they have to set up their bookkeeping system, they have to enter all their records, which is quite an elaborate thing to accomplish. [82]

Very few concerns would be very much interested in short terms unless the compensation was commensurate with a short term rather than a long term operation, because they would have to recover their additional expenses out of those fees.

The Court: Those questions of the court were not voir dire on the immediate matter, anyway. But

(Testimony of Jefferson A. Mann.)

they were something I thought if I didn't ask that I might forget. I would rather like to know the practice in the vocation in regard to this.

Now, proceed to your questioning.

Mr. Whyte: I renew the long hypothetical question which I asked before, and submit that the witness' qualifications as an expert have been laid sufficiently so he ought to be able to express his opinion as to the reasonable value of the Receiver's services in connection with his administration of the business and affairs of the former Richman Trust.

The Court: Do you have that question in mind?

The Witness: I do, your Honor.

The Court: You have a copy before you?

The Witness: Yes.

The Court: You had seen it before you came here today?

The Witness: I did, sir.

The Court: You may answer.

The Witness: In my opinion, the reasonable value of the Receiver's services in connection with his administration of the business and affairs of the former Richman Trust, in [83] my opinion is 5 percent.

The Court: Of what?

The Witness: Of the gross income from the properties during the period of his tenure.

Mr. Whyte: You may cross examine.

No. 14702

United States
Court of Appeals
for the Ninth Circuit

FREDERICK I. RICHMAN, Appellant,

vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

LYDA TIDWELL, Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

Transcript of Record

In Three Volumes

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(Pages 317 to 648, inclusive.)

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(Testimony of Jefferson A. Mann.)

Cross Examination

Q. (By Mr. Enright): Mr. Mann, you took into consideration the duration of the term, that it was from December 1, 1953, to February 28, 1954, that is, three months? A. I did, sir.

Q. And in considering those three months you took into consideration the expense that the person would be put to who would be rendering these services, such as assigning men, is that right?

A. Yes, sir.

Q. And setting up bookkeeping, is that right, and expense that would be incurred?

A. That is correct.

Q. Assuming there was no expense on the part of the Receiver, other than his own personal time, would that affect your opinion as to the 5 percent?

A. My opinion of the 5 percent is based on the facts as I know them in this case, and in this particular case my opinion of the 5 percent contemplated the payment by the trust [84] of the bookkeeping expense.

Q. That wasn't included in your hypothetical statement, was it? A. I am sorry, sir?

Q. That wasn't included in the hypothetical statement submitted to you, that the trust would pay the bookkeeping expenses, was it?

Mr. Whyte: Yes, it was, Mr. Enright.

The Witness: Yes.

Mr. Whyte: If you will look on page 3, the top of the page, the first sentence, "The Receiver also employed a full time bookkeeper in connection

(Testimony of Jefferson A. Mann.)

with the operations of the former Richman trust, who was paid a monthly salary from the former trust assets.”

Q. (By Mr. Enright): Did you take into consideration that the Receiver was paid a full time salary, while being employed, by the County of Orange, for his full work week commencing Monday morning at 9:00 and ending at 5:00 o'clock each day, and ending at 5:00 o'clock on Friday of each week, during the period commencing December 7, 1953, the week after he was appointed, to and including——

Mr. Whyte: That is objected to as assuming facts not in evidence.

Q. (By Mr. Enright): ——through and including February 28, 1954? Did you take into consideration any such facts as [85] that?

The Court: The objection should be placed after the question has been completely put. I suppose you were afraid the witness would come right out with an answer, before you got a chance to object. I don't think he would. He seems to be a deliberate sort of a witness. But I think the question is proper. Of course, it assumes. It is not a hypothetical question.

It is cross examination upon the hypothetical question you put. It assumes something as to which I suppose Mr. Enright is going to propose some evidence. If he doesn't propose some evidence he will be in a position of having asked a question that is not backed up by evidence.

I don't know of anything in the evidence now that

(Testimony of Jefferson A. Mann.)

suggests of employment by the County of Orange, that it was as extensive as this question indicates, but having scanned the deposition, in order to be better prepared for this hearing, I recall that Mr. Hallberg testified that he did hold a position with the County of Orange and it might be by the time we have the entire picture before us, that what Mr. Enright suggests in his question will be found to be true; I don't know. The objection is overruled.

Mr. Enright: Would you read the question?

(The question was read.)

The Witness: My answer to that is no, I did not for the reason I had no knowledge of it. And in further [86] explanation of my statement, it would not have made any difference in my opinion of value, because he rendered the services required of him in spite of the fact he was employed in other occupations.

Q. (By Mr. Enright): Pardon me, sir. Go ahead, if you wish to go on. You are non-responsively answering my question. Go ahead.

A. I thought I had answered. I had no knowledge of it, and I was explaining my answer, Mr. Enright.

The Court: You are entitled to give that explanation. If you don't, in response to this question, Mr. Enright will probably ask some more, or Mr. Whyte will. So we are going to have the whole picture here before we get through with the case, anyway.

Q. (By Mr. Enright): How do you know that

(Testimony of Jefferson A. Mann.)

he performed the services, other than because someone has told you and stated this hypothetical question to you?

A. I believe as an expert witness I am entitled to make certain assumptions on facts submitted to me.

The Court: You may assume that every fact stated in this hypothetical question is true. You can't add more facts to it.

The Witness: And basing my answer and explanation on the facts as contained in that statement, and as his Honor just stated, those facts are true, for that reason it would [87] not have made any difference.

Q. (By Mr. Enright): Now, if those facts are not true, then you would have a different opinion, wouldn't you?

A. Naturally.

The Court: Since you have worked in this field, tell me, is it possible to do everything that is enumerated in this hypothetical question asked you today and hold some other employment at the same time, or is this a full time job?

The Witness: Your Honor, in answering your question, if I may in this way, he was represented by his wife, who was an unpaid employee, who transacted a portion of the business.

He further was responsible for the function, and going to Rowan & Co. for illustration, for the purpose of illustration, the property manager or principal can make decisions at any time during the day.

(Testimony of Jefferson A. Mann.)

He can function on Saturdays, Sundays. He can function in the evenings.

And I would say, in answer to your Honor's question, that it is entirely possible for a man to do that, even though employed in another occupation.

The Court: Well, tell me, is your acquaintance with this type of business such that you would know whether it is customary for them to do so?

The Witness: Your Honor, the customary operations is for one man to handle many properties, such as the representatives of Rowan & Co. They make periodic trips to the [88] properties. The resident personnel in the property, such as the resident manager or whoever is there, has direct charge subject to the functions to the head of the apartment or the head of—such as Mr. Hallberg was doing. It is not customary for the individual himself in his position to do most of these functions. That is generally delegated to some subordinate.

Q. (By Mr. Enright): You were speaking of property management, were you not, sir, and not a receiver appointed by the court—

A. I am speaking of property management, yes, sir.

I believe that was your question, wasn't it?

The Court: Yes. I understand that this man is here as an expert on property management and not as an expert on receiverships.

Mr. Enright: Yes.

The Court: Hence, I asked my questions, having in mind the custom in property management, be-

(Testimony of Jefferson A. Mann.)

cause although we must apply the receivership rule, an intelligent application of that rule calls for knowledge of what is done in private business as well.

Mr. Enright: Very well. May I ask a further question?

The Court: Surely.

Q. (By Mr. Enright): Did you take into consideration that the only experience this man had since, I will say, [89] January 1, 1933, until the time of his appointment in the management of apartment house properties, and then only for an apartment house having 16 or 14 units, and then only that he managed that for a period of December 20, 1949, to November 29, 1950, that is, approximately 11-month period, operating one apartment house of 14 units, did you take that into consideration, that that was the experience of this man so far as apartment houses was concerned?

A. The experiences set forth in this question, as related to me, was that he managed some 50 units, 40 to 50 buildings of different types, and that he had also, while living in southern California owned and actively engaged in the management of apartment houses and other residential property located in this area. I took that into account.

Q. Did you take into account that the only apartment house he operated or owned or in any manner managed since January 1, 1933, was a 20-unit apartment house during the period December

(Testimony of Jefferson A. Mann.)

20, 1949, to November 29, 1953? Did you take that into account?

A. No, I did not know that fact.

The Court: What difference does it make in your ultimate answer, assuming that fact, as stated by Mr. Enright, to be a fact?

The Witness: It would have made no difference in my answer, your Honor. [90]

Q. (By Mr. Enright): Am I correct then, that his not having any experience wouldn't have made any difference, in your opinion, as to the value of his services being 5 percent?

A. No, that is not my answer.

Q. If his only experience were 11 months in one apartment house, wouldn't that have a bearing on your opinion, as to the value of his services?

A. That is not my understanding of it. I understand from the information supplied to me, upon which I predicated my answer, that he had managed 40 to 50 buildings. The period of whether or not he had managed one building since would not be of material effect, because he would be well versed from previous experience, where he had managed a large group of buildings. You just don't forget overnight your experiences under that type of operation.

The Court: Counsel is making the point here that that was very remote in time.

The Witness: That is what I said, your Honor.

The Court: Are you telling us the remoteness doesn't make any difference?

(Testimony of Jefferson A. Mann.)

The Witness: He is well versed in the methods of operation, yes, your Honor.

Q. (By Mr. Enright): And you would say Chicago operations, some 40 places for a bondholder during the year 1931 would be experience qualifying a person in December 1953 for [91] the operation of apartment houses in Los Angeles?

A. I would say that management of apartment houses in 1931 was a far more difficult period due to the period after the famous 1929 market crash, when apartment houses were very hard to operate. They were very difficult to obtain funds to operate. It was particularly difficult to even get tenants in them.

I would say that his experience at that time would stand him in good stead today.

Mr. Enright: No further questions.

Redirect Examination

Q. (By Mr. Whyte): What special significance, if any, did you attach to the fact, assumed in the hypothetical question to you, that the Receiver posted a bond of \$75,000.00 in this proceeding to insure the faithful discharge of his duties as Receiver?

A. To obtain \$75,000.00 bond the man would have to be of financial stability, good moral and—good reputation, to be able to obtain a bond of that size and character.

Q. Did you take into consideration the respon-

(Testimony of Jefferson A. Mann.)

sibility which a Receiver has for the acts of his agents and subordinates?

A. I did, very definitely. He is responsible, he is subject to all actions of those people under him. He is not only financially but he is morally responsible, and that is [92] the reason for the \$75,000.00 bond.

Mr. Whyte: I have no further questions.

The Court: Neither have I.

Mr. Enright: I would like to ask Mr. Hallberg some questions this afternoon. It may well be I can avoid causing his employer coming in from Orange County. I have him under subpoena at this time.

The Court: I intended to sit about until 20 minutes of 5:00. I have appointments with counsel in another matter that wanted to come after court, and I told them to be here at a quarter of 5:00.

Mr. Whyte: May Mr. Mann be excused?

The Court: May this witness be excused?

Mr. Enright: So far as I am concerned.

The Court: You are excused.

The Witness: Thank you, sir.

(Witness excused.)

ROY E. HALLBERG

called as a witness in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination

Q. (By Mr. Enright): Mr. Hallberg, you are

(Testimony of Roy E. Hallberg.)

now employed by the County of Orange, are you not? [93] A. That is correct.

Q. And you made an application to the County of Orange before December 1st, at least in the form of taking a civil service examination, did you not?

A. That is correct. That is not a civil service examination. That is a county examination.

Q. Some form of county examination. You did go to work for the County of Orange on December 7, 1953? A. That is correct.

Q. Your hours of employment are from 8:00 o'clock in the morning to 5:00 p.m. each day, Monday through Friday?

Mr. Whyte: Your Honor, I am going to register an objection to this line of testimony on the ground it is immaterial and irrelevant.

The question before the court is what is the reasonable value of the services which the Receiver has performed. What he may have done apart from those services has nothing to do with the determination of compensation that should be awarded to him for what he has done, without controversy.

The Court: But it appears to be controverted. Our knowing what other demands he had upon his time, during the time he was acting as the court receiver, I think would be very valuable to the court. The objection is overruled.

Mr. Whyte: Very well, your Honor.

Mr. Enright: Please read the question. [94]

(The question was read.)

The Witness: The hours are not stipulated.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Is Mr. Louis Byrum your immediate superior? A. He is.

Q. Did he direct you to report for work each work day of the week, Monday through Friday, after you commenced to work on or about December 7, 1953?

A. No, the only thing that I have to do is put in the eight hours required.

Q. My question was, did he direct you to put in eight hours' working time between the hours of 8:00 a.m. and 5:00 p.m. A. No.

Q. You did commence work on December 7, 1953? A. December 7th, correct.

Q. You were required to put in eight hours' work for the County of Orange each work day, Monday through Friday?

A. With one exception.

Q. February 22nd? Washington's Birthday?

A. No.

Q. Christmas? A. No.

Q. What other exception?

A. The exception was when I went with the county they [95] were informed I had prior commitments, which you can verify, that might take some time.

The Court: What did they tell you about it?

The Witness: Sir?

The Court: What did they say about it, when you informed them?

The Witness: That was perfectly all right for these prior commitments.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): You were required, though, to render eight hours' services to the County of Orange, were you not, each day?

A. With the exception of those commitments which were entered into prior to December 7th.

Q. And you were paid a monthly salary for your services, were you? A. That is correct.

Q. The monthly salary was \$355.00 per month?

A. Correct.

Q. And you were paid that salary for the month of December, 1953?

A. Not for the month of December; jut part of the month.

Q. That is, the remainder of the month of December, excluding the first week?

A. That is right.

Q. At the rate of \$355.00 a month? [96]

A. Yes.

Q. You were paid \$355.00 for the month of January? A. Correct.

Q. And the same for the month of February?

A. Yes.

Q. Same for the month of March, 1954?

A. Yes.

The Court: Would it be fair to say that the County of Orange got on an average of eight hours a day out of you during the time counsel has inquired into?

The Witness: Yes.

Q. (By Mr. Enright): Do you recollect that you gave your deposition on April 22nd in support of

(Testimony of Roy E. Hallberg.)

your petition in this matter, at which time you testified concerning your duties for the County of Orange?

A. Will you state that question again?

Mr. Enright: Please read the question.

(The question was read.)

The Witness: Yes.

Q. (By Mr. Enright): Directing your attention to your deposition, page 13, line 6:—

Mr. Whyte: Perhaps you had better show the witness the deposition, if you are attempting to lay a foundation for impeachment, Mr. Enright.

Mr. Enright: Yes, I will. To page 15, line 12.

Mr. Whyte: May I show my copy to the witness?

The Court: Yes, he is entitled to see it.

Mr. Enright: May I have the original deposition now, because I am only working from a copy. I have never seen the original yet.

Mr. Whyte: What are the pages and lines again?

Mr. Enright: Page 13, line 6, to page 15, line 12. I might inquire have there been any changes on those pages?

Mr. Whyte: Yes, there have been a few changes.

Mr. Enright: Is that the scrubbing-up of the English? Is that the only thing that was referred to this morning? I guess that is all.

Q. (By Mr. Enright): You have that before you?

Mr. Whyte: Let's get the page and line again.

Mr. Enright: Page 13, line 6.

Mr. Whyte: To what?

Mr. Enright: Page 15, line 13.

(Testimony of Roy E. Hallberg.)

The Court: May the original deposition be brought in from my chambers? I will put it down here and look at it, Mr. Enright. I don't recall whether this, at this particular place there are changes or not.

Mr. Enright: I think there was a change in "Uh-huh", to "Yes."

Mr. Whyte: I still don't have the concluding page and line to which you refer. [98]

Mr. Enright: Please read it to him.

(The record was read.)

Mr. Whyte: Page 15, line 13.

The Court: At the places you have just mentioned, Mr. Enright, I do not see any changes on the original.

Put the original before the witness.

Mr. Enright: I saw the change, I think, on Mr. Whyte's copy. That is what I was basing my statement on.

The Court: There are changes on those pages, but I understand at the lines you are referring to there are no changes, at the immediate lines.

Why not come up and take a look at the deposition, so everyone will know what we are doing?

Q. (By Mr. Enright): At that time did you testify as follows, concerning your duties at the County of Orange, commencing on page 13, line 6:—And I will read—

"Q. Well, what special assignments or special jobs have you performed since October of '53?

(Testimony of Roy E. Hallberg.)

A. Well, let's see, I have done some appraisal work, and I managed our own building.

Q. For whom did you do appraisal work, or special jobs, since October of '53?

A. County of Orange.

Q. County of Orange, and would you explain further what you mean by 'special assignment' or [99] 'special jobs'?

A. Well, those are usually somebody needed a little help on something. It was more or less jobs that—you see, I could—until just a few years ago, just about a year ago, I wasn't capable of doing any sustained work.

Q. Now——

A. I think that will hold it for the time being.

Q. Well, I would like to know. You see, that's October '53. You were appointed receiver on December 1st, '53.

A. Yes.

Q. Were you doing special jobs and assignments after your appointment?

A. Yes.

Mrs. Hallberg: Took a trip or two for Binkley's, didn't you?

The Witness: Well, I took that prior to December, 1953. That's some time ago. Yes, I have been doing some since that time.

Mr. Enright: Q For whom?

A. For the county.

Q. County of Orange? A. Yes. [100]

Q. What department? A. Appraisal.

Q. What department of the county?

A. Appraisal.

(Testimony of Roy E. Hallberg.)

Q. Appraisal Department of the County of Orange? A. That's right.

Q. Is that under the Board of Supervisors or——

A. Well, it's under the County Appraiser.

Q. I beg pardon?

A. Under the County Appraiser.

Q. Would that be the County Assessor's Office?

A. County Assessor's Office, that's right.

Q. On how many occasions did you do appraisal work for the County Appraiser's Office?

A. Quite a few.

Q. In number how many?

A. Oh, I—I couldn't tell you exactly. I haven't counted them.

Q. You have a particular rate of compensation that you receive from the County of Orange?

A. Yes.

Q. What is the rate of compensation?

A. Well, it's about \$350 a month.

Q. What are the terms as to time that you are required to expend in rendering services to the [101] County of Orange?

A. Well, it's more or less on my own.

Q. Well——

Mrs. Hallberg: You haven't done that since October.

Q. (By Mr. Enright): You have done no work for the County of Orange since October, 1953, is that what I understood Mrs. Hallberg to state?

A. I haven't done it—oh, I have been there at

(Testimony of Roy E. Hallberg.)

the county, yes; I have been working there at the county since that time.

Q. On how many different occasions?

A. Right straight through.

Mrs. Hallberg: No, not since October of '53."

Did you so testify at that time, that is, April 22, 1954?

The Court: What he wants to know, Mr. Hallberg, is did the reporter get it down correct? Are those the questions asked and the answers you answered at that time?

The Witness: I question some of the phraseology here.

The Court: That is not what we can go into now. The question is, is that a correct report of what was said at the time that it is reported?

The Witness: I believe it is.

Q. (By Mr. Enright): Now, directing your attention to your deposition again, on April 22, 1954, at page 34, line 15, [102] to page 38, line 18.

I will ask you to review those pages and state whether or not you did so testify at that time.

A. Now, what is your first question?

Mr. Enright: Read the question, please, Miss Reporter.

(The question was read.)

(The witness complies.)

Mr. Whyte: Now, Miss Reporter, will you read the question again?

(The question was read.)

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Did you so testify at that time? A. I did.

Q. At that time you testified, and may I read the original, not, as you have made some changes, commencing at page 34, line 15:

“Q. Now, you are presently employed, are you, by the County of Orange? A. That’s right.

Q. At what salary?

A. I think you have that.

Q. \$350 a month? A. 300—

Q. You are presently employed?

A. That’s right.

Q. When did you commence working for the [103] County of Orange at 350?

Mr. Whyte: Objected to as having already been asked and answered.

Mr. Enright: He has not stated the date or what month he commenced working. He says October or November or December. Now, which month is it?

Mr. Whyte: The witness has stated to the best of his recollection, Mr. Enright. It’s been asked and answered, and I am going to instruct the witness not to answer it further.

Mr. Enright: Q. All right, which month of the year 1953 did you commence working for the County of Orange as an appraiser.

Mr. Whyte: Same objection.

Mr. Enright: You instruct him not to answer, Mr. Whyte?

Mr. Whyte: I do.

(Testimony of Roy E. Hallberg.)

Mr. Enright: Will you cite the witness, instruct the witness, Miss Reporter?

Mr. Whyte: You don't have to. I will stipulate with you that the questions may have been put to this witness in the proper manner. You don't have to go through any formal rigmarole.

Mr. Enright: I appreciate your concept of rigmarole, but you do agree, do you, Mr. Whyte, that [105] the reporter has instructed the witness to answer this question: In what month of the year 1953 did he become an employee of the County of Orange at a salary of \$350 a month?

Mr. Whyte: So stipulated.

Mr. Enright: And the witness refuses to answer?

The Witness: On advice of counsel.

Mr. Whyte: On advice of counsel.

Mr. Enright: All right.

Q. Now, do you have any particular office hours during the week as an employee of the County of Orange? A. No.

Q. Are you required to report at any time on any day of any week? A. No.

Q. Will you state how many days during the month of December you worked for the County of Orange; that is, December, 1953?

Mr. Whyte: Objected to as having already been asked and answered. The witness testified very few.

Mr. Enright: Q. Do you have a desk as an employee of the County of Orange? A. No. [105]

(Testimony of Roy E. Hallberg.)

Q. Do you have a telephone extension number?

A. No.

Q. Who is it that assigns you or directs you in your work whereby you receive a salary of \$350 a month as an employee of the County of Orange?

A. Chief Appraiser of the Personal Property Division.

Q. His name, sir? A. Mr. Louis Byram.

Q. Would you spell it? A. B-y-r-a-m.

Q. How long have you known him?

A. About three, six months, I guess. No, well, since about—it's about four months.

Q. Can you state how many days during the month of December you rendered services to the County of Orange?

Mr. Whyte: Objected to as having already been asked and answered.

Mr. Enright: Q. Will you state how many days—and this has not been asked of you—you expended your time in rendering services to the County of Orange in the month of January, 1954?

Mr. Whyte: If you can recall, Mr. Hallberg.

The Witness: No. [106]

Mr. Enright: Q. On advice of counsel, you can't recall, is that right, Mr. Whyte?

Mr. Whyte: I asked him if he can recall.

Mr. Enright: Is that an objection for this record?

Mr. Whyte: I am not objecting to the witness——

(Testimony of Roy E. Hallberg.)

Mr. Enright: Are you aiding the witness, Mr. Whyte?

Q. Do you recall—

Mr. Whyte: Mr. Enright, I don't like your attitude.

Mr. Enright: I appreciate you don't. That's mutual.

Mr. Whyte: I stated on the record that if the witness can recall, he may answer.

Mr. Enright: Is that an objection?

Mr. Whyte: That is not an objection.

Mr. Enright: Very well.

Q. Can you recall, Mr. Hallberg?

A. I said I couldn't recall.

Q. Now, I will ask you another question, Mr. Hallberg: Can you recall how many days during the month of February, 1954, you spent in rendering services to the County of Orange at a salary of \$350 a month? [107]

A. The exact time? I cannot recall.

Q. Can you give us any estimate at all as to the amount of time you spent in either one of those three months, December, January or February, 1953, 1954?

Mr. Whyte: Will you read the question back, please, Miss Reporter?

(The pending question was read by the reporter.)

Mr. Whyte: Objected to as having already been asked and answered. The witness is instructed not to answer."

(Testimony of Roy E. Hallberg.)

Did you so testify, and the following did occur at that time, on April 22, 1954, is that correct?

A. Yes.

The Court: I understood his testimony here today to be that he worked on an average of eight hours a day on a five-day week for the County of Orange during the time in question.

Is that right, Mr. Hallberg?

The Witness: That is correct.

Mr. Enright: Well, I had to ask the questions, because the witness at page 36, I think it is, as follows, testified at that time, so now I am first informed his questions and answers were:

“Q. Now, do you have any particular office hours during the week as an employee of the County [108] of Orange? “A. No.

“Q. Are you required to report at any time on any day of any week? “A. No.”

That is the subject matter we are now informed, I take it, this Receiver had an eight-hour day for the County of Orange.

The Court: As I understood him, it was an average of eight hours per day on five-day week basis, but that it wasn't always eight in any one particular day, it just averaged up to eight hours.

Mr. Enright: Well, I understand that to be his testimony. I will clarify, if I may.

The Court: Surely.

Q. (By Mr. Enright): Were you or were you not instructed by Mr. Byrum to report to work at 8:00 a.m. or 9:00 a.m. in the morning?

(Testimony of Roy E. Hallberg.)

A. No. The requirements there are eight hours a day.

Q. Well, what eight hours is it, between midnight and midnight, or what? A. Could be.

Q. You mean there are no office hours, so far as you are concerned, in your status as an employee of the County of Orange? [109]

A. The type of work I was doing——

Q. Please, sir, would you mind answering my question? A. I am trying to.

Q. I am not concerned about the type of work you are doing. I am concerned only in one point, as to your office hours.

Mr. Enright: I submit it involves only an answer——

The Witness: I had no office hours.

Q. (By Mr. Enright): That is your testimony?

A. That is it.

The Court: Mr. Hallberg, were you appraising property, or what?

The Witness: I was auditor-appraiser.

The Court: Was that work performed in an office in the county establishment or was it performed—— The Witness: Out in the field.

The Court: ——various places.

The Witness: Out in the field. A lot of the work that I picked up was analyzed and transferred to other records at home that night.

The Court: Did you hear the answer?

Mr. Enright: I would like to have it read.

(The answer was read.)

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Weren't you required, Mr. Hallberg, to spend a one-half day in the office and one-half day [110] in the field?

A. Not necessarily.

The Court: Well, was that the practice?

The Witness: No, it wasn't the practice.

The Court: I don't like to interrupt in the midst of a phase of cross examination, but we are going to adjourn for the day.

You noted the jury case ahead of you, which was scheduled to have ended last week, but isn't over as yet.

I know counsel arranged their calendars for days on which a case is set, so I am making them work on a share-time basis until they get through.

We can open at 9:15, if you like, tomorrow, because we are going to have to give them the afternoon.

You don't have to come at 9:15, if you wish to we will get in a long morning. If it is an inconvenient hour, we will convene at 10:00.

Mr. Enright: I am committed to transcontinental calls between 9:00 and 9:45. I can be here at 9:30, perhaps. I had better ask it be at 9:45, if I may.

The Court: All right. We will stand adjourned until 9:45 tomorrow morning.

(Whereupon, at 4:45 o'clock p.m., Wednesday, May 12, 1954, an adjournment was taken to Thursday, May 13, 1954, at 9:45 o'clock a.m.)

* * * * * [111]

LOUIS B. BYRUM,

called on behalf of the defendants, being first duly sworn, testified as follows:

The Clerk: Please be seated. Your full name, sir.

The Witness: Louis B. Byrum.

Direct Examination

Q. (By Mr. Enright): What is your residence, Mr. Byrum?

A. 815 North Van Nuys, Santa Ana.

Q. Your occupation, sir?

A. I am a Deputy Assessor with the County of Orange.

Q. Do you know Mr. Roy E. Hallberg?

A. Yes, sir.

Q. How long have you known him?

A. I would say approximately five months.

Q. You came to the courtroom with him this morning, did you?

A. I came up with him, yes, sir.

Q. Are you in any manner connected with Mr. Hallberg in your employment?

A. My position is supervising appraiser, and he works in my department. [115]

Q. Is Mr. Hallberg assigned to appraiser work upon marine and personal property for the County of Orange?

A. He is not.

Q. Does he work under your direction?

A. He does.

Q. What is his assignment under your direction?

A. He is an auditor-appraiser.

Q. You were subpoenaed, were you, to produce certain records?

A. Yes, sir.

(Testimony of Louis B. Byrum.)

Q. Have you produced the record of Roy E. Hallberg making application for employment to the County of Orange? A. I have not.

Q. Did you check to see if there was such a record?

A. That is not within my jurisdiction. It is not in my department.

Q. What did you do in response to this subpoena?

A. I found out that my particular position is not either to hire or fire. That is not even under my jurisdiction. I have no access to those records.

Q. Did someone say that to you? I asked you what you had done. You told me what you found out. I believe that is your conclusion.

I am merely trying to find out what you did?

A. I was informed that those were not—— [116]

The Court: Then you made some inquiry?

The Witness: I did make some inquiry.

The Court: What he wants to know is what inquiry did you make or what led to your being informed?

The Witness: I found out that the records of the employment——

The Court: How did you do that? Did you take down a book and find rule so and so or did you ask the County Council?

The Witness: No, I talked to the assessor and also called the personnel office.

Q. (By Mr. Enright): Now, am I correct in my

(Testimony of Louis B. Byrum.)

understanding that Mr. Hallberg works under your supervision and direction?

A. Under my supervision, yes, sir.

Q. Can you state when Mr. Hallberg started to work under your supervision and direction?

A. I hadn't stated, no, sir.

Q. Would you state? A. December 7th?

Q. 1953? A. 1953.

Q. Did he continue to work under your supervision and direction through February 28, 1954?

A. That is right, yes, sir. [117]

Q. Is he still under your supervision and direction? A. Yes, sir.

Q. Did you direct him to report for work on the work days of Monday through Friday at a particular hour in the morning? A. No, sir.

Q. Have you ever given him any direction as to the hours of his employment? A. No, sir.

Q. You know, of your own knowledge, whether he has any particular hours of employment?

A. The county ordinance provides a 40-hour week of eight hours a day, but no specific time.

The Court: Does it require that 40 hours be devoted during the week to county business?

The Witness: That is right, yes, sir.

Mr. Enright: I must confess, your Honor, surprise at this time, and I will state the basis of the surprise by interrogating the witness.

The Court: Well, I understood you expected a different series of answers.

Mr. Enright: I certainly did.

(Testimony of Louis B. Byrum.)

The Court: You don't have to state it further, if your purpose is impeachment.

Mr. Enright: All right. [118]

Q. (By Mr. Enright): Did you have a conversation on the telephone with me last Tuesday concerning the subject matter of your appearing in this court on Wednesday?

A. I had a conversation concerning appearing, yes, sir.

Q. Now, before that conversation last Tuesday, that is, of this week, had you also talked to Mr. Winthrop O. Gordon, an attorney practicing at Santa Ana?

A. Yes. He came to my office.

Q. And he served the subpoena upon you, did he?

A. He did.

Q. Did he at that time show you a letter?

A. He did.

Q. He did? A. He did.

Q. Do you have a copy of the letter?

A. I have a copy—I have the original, I believe.

Q. May I see it? A. No, it is a copy.

Mr. Enright: May I have the document marked for identification?

The Clerk: Defendants' Exhibit A for identification.

(Said document was marked Defendants' Exhibit A for identification.)

Q. (By Mr. Enright): Directing your attention to [119] Exhibit A for identification, did you have a conversation with Mr. Gordon at the time

(Testimony of Louis B. Byrum.)

that the subpoena was served upon you, which I assume was some day after May 3, 1954?

Would you answer that last part first? The subpoena was served after May 3, 1954, wasn't it?

A. Yes.

Q. And at the time the subpoena was served you received this letter, didn't you, Exhibit A?

A. I did.

Q. Now, my question is: Did you have a conversation with Mr. Gordon concerning the second paragraph? I will read it.

"I understand Mr. Byrum will testify that he is the Deputy Assessor, Auditor-Appraiser, for the County of Orange, in charge of marine and personal property appraisal; that in this capacity it is his duty to supervise the work of Mr. Roy E. Hallberg who has been instructed and is required to report for work each day of the week Monday through Friday, at the hour of 8:00 a.m., and to remain on duty until 5:00 p.m.; that he is required to spend one-half of each day in the office and one-half of each day in the field, performing his duties as an appraiser; that Mr. Hallberg commenced performing his duties on Monday, December 7, 1953, and continued [120] each work day through February 28, 1954, at a monthly salary of \$355.00 per month."

Did you have a conversation with Mr. Gordon?

A. Yes, sir.

Q. Did you state to him in substance the same as is stated in that paragraph?

A. I did not.

(Testimony of Louis B. Byrum.)

Q. What did you state to Mr. Gordon?

A. I told him that the contents of this letter was incorrect.

Q. You stated that to him at the time the subpoena was served?

A. I told him that at the time.

Q. Did you have a previous conversation, within 10 days or more, or approximately, before this letter was shown to you?

A. I had a previous conversation with Mr. Winthrop—I don't recall the exact time.

Q. Did you at that time tell Mr. Winthrop Gordon Mr. Hallberg's hours were from 8:00 in the morning until 5:00 in the afternoon?

A. I did not.

Q. What are his hours?

Mr. Whyte: Objected to as having already been asked and answered; gone over several times. [121]

The Court: Overruled.

The Witness: The question is what are his hours?

Q. (By Mr. Enright): Yes, work days.

A. There is no definite hours set up in the ordinance.

Q. What hours do you report to work?

A. I happen to be supervising appraiser and the office opens at 8:00, but many times I am not there. If I have other business I don't go near the office.

Q. What time does the office close?

A. The office closes at 5:00.

(Testimony of Louis B. Byrum.)

Q. What time do you leave the office when you are working?

A. I sometimes leave at 6:00 o'clock. I sometimes leave in the afternoon at 4:00 o'clock, or any time.

Q. How many men or persons work under your direction there? A. Some approximately 60.

Q. 60?

A. Yes. That could vary one way or the other, but that is approximately the number.

Q. Will you again state the nature of the work that you had instructed Mr. Hallberg to perform?

A. Mr. Hallberg is an auditor-appraiser.

Q. Will you now explain what are the duties of an auditor-appraiser under your direction for the County of [122] Orange, and Mr. Hallberg in particular?

A. What his particular duties are?

Q. Yes.

A. His duties are to call upon the various industries in the county, to prepare assessment statements for them, to assist them in preparing assessment statements.

Q. Does he have any office duties at all?

A. No definite duties, no.

Q. What does he do when he works in the office of the County of Orange under your direction?

A. He comes in and possibly completes his work from time to time, but with no definite hours.

Q. You have told us about the indefiniteness of the hours, I appreciate that.

(Testimony of Louis B. Byrum.)

Tell me how he completes his work in the office.

A. Well, do you want me to go through the complete assessment procedure?

Q. Yes, if that is what Mr. Hallberg does. If he participates in it, would you explain what his duties are?

A. He obtains from the taxpayer—he obtains a property statement and then he figures the various assessment values, and then transfers that record to a permanent record.

Q. And that is a part of his duties, to make up this permanent record of the County of Orange?

A. Right. [123]

Q. And how many hours a day does he spend in performing this office, these office duties?

A. I can't answer that question.

Q. Have you no knowledge of how many hours a day he spends in the office during this period?

A. I don't know. It isn't definite.

Q. But you do observe him there, don't you?

A. That is right, but I couldn't answer that; I do not know.

Q. Well, how many men perform the same type of duties that Mr. Hallberg performs, that you have under your direction?

A. We have two that are performing the same type of duties.

Q. Now, have you ever done this appraisal work yourself? A. Yes, sir.

Q. Business places whose property is being appraised or assessment record being made upon, they

(Testimony of Louis B. Byrum.)

are normally open during office hours, aren't they?

Mr. Whyte: Objected to as leading and suggestive, and argumentative. This witness is called by the defendants in this case, and I suggest that counsel stand by questions which are to elicit direct testimony.

The Court: I think he should have full privilege of cross [124] examination of this witness. I don't know that he is strictly adverse. Mr. Enright, if he is at least living up to expectations, it doesn't entitle you to full impeachment, but I think it does entitle you to a rather full cross examination, so we will allow it.

The Witness: I don't remember the question.

Q. (By Mr. Enright): Now, I will reframe the question. You have done assessment work such as Mr. Hallberg is performing for the county, haven't you, in the past? A. Yes, sir.

Q. And does that involve going out to the places of business situate in the County of Orange and looking at the personal property there?

A. It does.

Q. In their places of business? A. Yes.

Q. It is personal property assessment, isn't it?

A. I am in charge of the personal property division, yes, sir.

Q. That is the type of work Mr. Hallberg is doing, isn't it? A. That is right.

Q. Those places of business are normally open and available to inspect the personal property dur-

(Testimony of Louis B. Byrum.)

ing the hours of 8:00 in the morning until approximately 5:00 in the evening? [125]

A. They are not.

Q. They are normally, that is, normally when you do the work of assessing?

A. May I ask you a question?

Q. Surely.

A. Bullock's don't open until 10:00 o'clock, do they?

The Court: Mr. Witness, we can't get into arguments. You can ask questions if it is necessary for you to understand.—

The Witness: The point was that I was trying—

The Court: —the question put to you. I will take that as an answer to the effect that you are governed somewhat by the hours of availability of the persons conducting the businesses whose assets your office appraises, is that right?

The Witness: That is correct.

Q. (By Mr. Enright): Now, the offices of the places of business in Orange County are normally available for assessment work during the hours from 8:00 to 5:00 p.m.?

A. Will you restate that question? I didn't quite understand it.

Mr. Enright: Will you read the question?

(The question was read.)

The Witness: Not all of them.

The Court: Let's see, Mr. Witness, ordinarily

(Testimony of Louis B. Byrum.)

appraisal work is done during the business day, isn't it? [126]

The Witness: Yes, but some of them, your Honor, are not open at that time of day. Do I make it clear?

The Court: Yes. I am trying to appreciate what businesses would not be open during the daytime, particularly in Orange County. We don't think of it as a night spot. Offhand, can you name any manufacturing industries that work three shifts down there at Santa Ana at this time, that work around the clock and have the executive offices open 24 hours a day.

The Witness: No, I don't know that.

The Court: The witness has said that work is ordinarily done during the business day. The court understands the business day to mean some time between sunrise and sunset, as an ordinary thing.

Q. (By Mr. Enright): Now, ordinarily, you, Mr. Byrum, do not go out at sunrise, around 6:00 in the morning and go into these executive offices for the records of these personal property owners, to do assessment work, do you?

A. No, I do not, not at sunrise.

Q. It is normally after 8:00 o'clock in the morning?

A. It is normally after 8:00 o'clock, yes, sir.

Q. It is before 5:00 o'clock when the normal executive or administrative employees go home, isn't it?

A. Not always.

Q. No, but I said normally. [127]

(Testimony of Louis B. Byrum.)

A. Well,—

Q. Isn't that right, Mr. Byrum?

A. Yes.

Q. And normally Mr. Hallberg performs his eight-hours' duties between 8:00 in the morning and 5:00 in the evening, isn't that right?

A. That is not right.

Mr. Enright: No further questions of this witness.

The Court: Well, does Mr. Hallberg's work include the preparation by him of reports and data of one kind and another for your office?

The Witness: Yes.

The Court: Is that work of preparing such forms one that requires a small amount of his time or does it require a large amount of his time?

The Witness: I would say that the preparing of the data requires about as much of his time as in the actual interview in the business.

The Court: Do you have some rules or regulations of your office where that preparation of the data shall be done?

The Witness: We do not.

The Court: Ordinarily a person having a problem with the assessor's office can walk into the assessor's office and find someone back of the counter who is available to answer questions or give office assistance, sir. Is that true of [128] your office?

The Witness: Yes, sir.

The Court: Does Mr. Hallberg ever have the

(Testimony of Louis B. Byrum.)

duty of being the person behind the counter, to render such services?

The Witness: He does not.

The Court: Well, what are the duties that he has within the office?

The Witness: His duties within the office are to complete his assessment of the business. In other words, to make permanent records and transfer to permanent records, and he may do that in the office or he may do it at home. He may do it anywhere. He doesn't necessarily have to do it at the office.

The Court: Is he on a quota basis?

The Witness: He is not.

The Court: Was he at any time within the past year?

The Witness: On a quota basis?

The Court: Yes, turning out a certain amount of work. For instance, we judges are on a quota basis. They assign us a certain number of cases. We have to handle a certain number.

Do you assign your deputy assessors, such as Mr. Hallberg, a certain number of cases or assessments or certain areas?

The Witness: Yes, I turn over definite cases to Mr. [129] Hallberg.

The Court: Now, did he during the time, beginning in December of 1953 and extending through March of 1954, turn in a full quota of work?

The Witness: He turned in a full quota of work.

The Court: Then would it be fair to say that he was devoting 40 hours a week to the duties of

(Testimony of Louis B. Byrum.)

his employment with you, in order to dispatch that quantity of work? Do you understand what I mean?

Would a man have to work about 40 hours a week in order to do that much work?

The Witness: It would seem so, yes.

The Court: Do you have any reason to believe Mr. Hallberg didn't devote that amount of time to the discharge of his duties with you?

The Witness: I have no reason to believe he did not. We were aware of the fact that he had prior commitments.

Mr. Enright: I move to strike the statement as not being responsive to the question.

The Court: It wasn't responsive to any question. It is something which could have been brought out by a proper question, though, so I will let it stand.

Q. (By Mr. Enright): If one were to call KImball 2-6211 and ask for Extension 355 he would reach Mr. Hallberg?

A. You would reach my desk, my phone. [130]

Q. Kimberly, I think it is.

A. That is right. You would reach my phone, my desk.

Q. Do you permit the deputy assessors to take the permanent records of the County of Orange away from the office to their homes?

A. I might explain that in this way: We have what is known as a fee sheet, real estate sheet. That particular record is a permanent record, but it goes out with the deputy and from that it is

(Testimony of Louis B. Byrum.)

transferred to a permanent roll, which never leaves the office.

The Court: Counsel, just for your information, you can point out to me, if I am in error, wherein I am in error, but I think the point has been pretty well made here that the County of Orange had a demand upon Mr. Hallberg for 40 hours a week.

As I understand this witness' testimony, that 40 hours was served by erratic time. I think it makes no difference whether, for the purpose of this case, Mr. Hallberg did the work at home or if he did it in the office. He was spending 40 hours a week with Orange County, which would show that 40 hours a week, at least, were not being devoted to the duties of this Receivership.

Mr. Enright: Yes. At a rate of pay of \$355.00 a month.

The Court: And that he was earning \$355.00 a month. I think those points have been pretty well made. The [131] important thing here is how shall that be considered in the fixing of his fee?

Mr. Enright: I have no further questions on the same subject matter.

Q. (By Mr. Enright): Tell me, you didn't employ Mr. Hallberg, did you?

A. I do not employ them, no.

Q. Did you have any conversation with him concerning the terms of his employment before he was employed?

A. Yes.

Q. And when did that occur?

A. I couldn't tell you definitely.

(Testimony of Louis B. Byrum.)

Q. Was it a week or 10 days before he commenced to work? A. Yes.

Q. That would be in the latter part of November?

A. This particular conversation that I had with him was as a result of examinations. In other words, I talked to 15 people who took this particular examination, and I wouldn't say I definitely talked to him about a permanent appointment at that time, because I hadn't interviewed them all, if that is what you are trying to bring out.

Q. I am trying to fix time, first, Mr. Byrum. When was the examination given?

A. I can't remember that, really. [132]

Q. Was it 30 or 60 days or 90 days before December 7, 1953?

A. I conducted so many examinations at that time I don't really—there are several examinations conducted.

Let me explain a little bit. You see, we employ about 40 seasonal people, and these examinations were conducted from time to time, and I couldn't tell definitely when this one was conducted.

The Court: Is Mr. Hallberg an employee on a seasonal basis?

The Witness: He is a permanent employee, yes, sir.

Mr. Enright: I didn't hear the answer. Will you read it?

The Court: He is a permanent employee, as I understood it.

(Testimony of Louis B. Byrum.)

Mr. Enright: That is my understanding.

The Witness: Yes.

Q. (By Mr. Enright): In any event, there were 15 different persons interviewed by you concerning this particular position held now by Mr. Hallberg?

A. Yes, sir.

Q. And among those 15 persons one of them was Mr. Hallberg?

A. Yes, sir.

Q. And at that time you had a conversation with Mr. [133] Hallberg, did you, concerning his employment?

A. Yes, concerning the employment.

Q. Of Mr. Hallberg?

A. He hadn't definitely been selected at that time.

Q. Was that the time you were advised by him he had previous commitments?

A. I don't know.

Q. What did he say about his previous commitments to you?

A. At the time I called him for work, I know at that time he told me about previous commitments.

Q. What did he say?

A. I called him to go to work, I believe it was, Wednesday—wait a minute. It was either Wednesday or Thursday of the—before the 7th of December that I called him.

He told me at that time he had prior commitments and wanted to know if it would be all right to come to work on Monday, the 7th.

(Testimony of Louis B. Byrum.)

Q. And that is all that was said at that time? He did report for work on Monday, the 7th, didn't he? A. That is right.

Mr. Enright: I have no further questions of the witness.

Mr. Whyte: I have one or two questions, Mr. Byrum.

Mr. Enright: May I offer in evidence Exhibit A for [134] identification. That is the letter the witness admitted receiving.

The Court: Admitted.

(Said document marked Defendants' Exhibit A was received in evidence.)

Mr. Whyte: Just for the purpose of the record, I would like the record to show that this is an attempt to impeach Mr. Byrum with respect to a matter which is wholly immaterial.

I registered an objection yesterday to this line of testimony, as to what Mr. Hallberg did for the County of Orange for the time he spent there, because what he did down there doesn't make any difference in so far as his compensation for this receivership is concerned.

If he did the things which are alleged in his petition and spent the time that he says he has spent and performed the duties which are enumerated and set out in his petition, and testified to in his deposition, then, in my opinion, it doesn't make a bit of difference what he did on the side, because he is entitled to compensation for the work which he did.

(Testimony of Louis B. Byrum.)

The Court: Of course, he is entitled to compensation for what he did. But in order to know to what extent we are required to know how much demand on Mr. Hallberg's time this Richman trust made.

Mr. Whyte: I realize that, your Honor has ruled that. [135] I am not objecting.

The Court: All right. I am just letting you know that I do think it is proper for that purpose. If, for instance, Mr. Hallberg had held this position with the County of Orange for 10 years, and the court asked him to take a receivership and he had to leave the County of Orange because the receivership was taking up all of his time and would come in here and say, "I worked 20 hours a day on that receivership," that would entitle him to a different compensation than a business which would not be a full time employment.

Mr. Whyte: May I proceed?

The Court: Yes.

Cross Examination

Q. (By Mr. Whyte): I understood you to say, Mr. Byrum, that the preparation of the data with respect to the appraising and assessing took about as much time as the actual appraisal work in the field, is that correct?

A. I would think so, yes.

Q. Do you know, of your own knowledge, whether Mr. Hallberg prepared much of the data

(Testimony of Louis B. Byrum.)

necessary towards appraisal work at his home in the evenings?

A. I couldn't answer that question, I don't know.

Q. Are you acquainted with the fact that only last night Mr. Hallberg visited a large restaurant in the County [136] of Orange after dinner, in connection with the performance of his duties for your office?

A. I am aware of the fact he did.

Q. Yes.

A. He turned in a report on it this morning. I can't swear that he did it last night, but a report was turned in this morning on that business.

Q. Did the report show that the work was done some time after 5:00 o'clock last night?

A. I wouldnd't be able to swear to that.

Mr. Enright: I object on the ground the report is the best evidence of what it states.

The Court: Objection sustained.

Mr. Whyte: The facts will speak for themselves, because Mr. Hallberg was in court all day yesterday. The court can draw its own conclusion as to when he performed that work.

Q. (By Mr. Whyte): You mentioned, in connection with the preparation of the data necessary for Mr. Hallberg's work, there is no requirement that that need be done in the office, is there, Mr. Byrum? A. There is not.

Q. You mentioned a conversation with Mr. Hallberg before he accepted employment at your office

(Testimony of Louis B. Byrum.)

on or about December 7, 1953. Did he tell you at that time that he had prior commitments with reference to a receivership in the [137] Federal courts?

A. He did not, not that he had a receivership. He told me that he had prior commitments, other things that he had to clear up.

Q. What did you say to him? Did you tell him that that was perfectly all right?

A. I might just—you want me to answer the question? I would like to say that quite often when you employ a person—

Mr. Enright: I move to strike what they quite often do. The question is what was the conversation at that time.

The Witness: I don't remember.

The Court: Motion granted.

Q. (By Mr. Whyte): You answered you don't remember, Mr. Byrum?

A. Yes; I don't remember.

The Court: May I ask one question? Is Mr. Hallberg now required to devote his full time, or, to put it another way, is he now allowed at this time to have outside employment? Do you understand what I mean?

The Witness: To have outside employment when he is working for the County of Orange?

The Court: Yes.

The Witness: There is nothing in the—I really don't know. [138]

The Court: I understand there are some Federal

(Testimony of Louis B. Byrum.)

offices which require persons taking employment there to not have any other employment. There are some municipalities which have those requirements, with respect to peace officers and so on. They want to have their full energy devoted to the requirements of the position.

I wondered if this position which Mr. Hallberg is in has that requirement as of this time.

The Witness: I don't remember just what the terms of the county ordinance in that respect are.

Mr. Whyte: I have no further cross examination.

The Court: Redirect?

Mr. Enright: No, I have no questions.

The Court: May this witness be excused?

(Witness excused.)

Mr. Enright: Mr. Hallberg.

ROY E. HALLBERG

called as a witness in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Enright): I direct your attention to the oath of Receiver constituting a part of the files in this action, and to the fact it is filed, dated December 2, 1953.

That is the day on which you took your office, is it not? [139]

A. I believe that it was the same date.

(Testimony of Roy E. Hallberg.)

Q. That was a Wednesday before December 7, 1953? Or, we can check it from the calendar, of which I think the court takes judicial notice.

You had been out directing the managers of the apartment houses before you signed your oath on December 2, 1953, hadn't you?

A. We had gone out to advise them that the management was going to be invested in a Receiver.

Q. You did more than advise them, you took the money from two or three of the five apartment managers?

A. Two of them, yes.

Q. Did you tell his Honor, Judge Tolin, at the time you filed your oath here on December 2, 1953, a Wednesday, that you were to become a permanent employee of the County of Orange, commencing Monday, December 7th?

A. I didn't—

Mr. Whyte: Objected to as immaterial, irrelevant.

The Court: Overruled.

Mr. Enright: Will you read the question?

(The question was read.)

The Witness: I knew nothing about it.

Q. (By Mr. Enright): You heard the testimony of Mr. Byrum—

A. At the time we filed that— [140]

Q. Pardon me just a moment, Mr. Hallberg. May I finish my question?

A. Certainly.

Q. You heard his testimony, in which he stated that on Wednesday before you went to work on De-

(Testimony of Roy E. Hallberg.)

cember 7th, that he talked to you concerning your going to work on the following Monday?

Did you hear him testify to that?

A. I did not hear him testify that was Wednesday morning before I went to work.

Q. Tuesday or Wednesday, then, before you went to work? A. No.

Mr. Enright: I will stand on the record.

Q. (By Mr. Enright): You did have a conversation with him before you did go to work, didn't you?

A. I had a conversation before I went to work, yes.

Q. You went to work on December 7, 1953, isn't that clear? Can we agree on that?

A. Went to work where?

Q. County of Orange.

A. No,—I am sorry. December 7th, yes.

Q. Now, that was on a Monday, wasn't it?

A. That was on a Monday, correct.

Q. Now, the previous week you had a conversation with Mr. Byrum, as he testified to here on the witness stand, [141] didn't you?

A. That is correct.

Q. Now, directing your attention, Mr. Hallberg, to your employment previously to going to work for the County of Orange, you were employed during the period of September 1952 to October 1953 by the Narmco Company at Costa Mesa?

A. That is correct.

(Testimony of Roy E. Hallberg.)

Q. Your rate of compensation was \$350.00 a month? A. That is correct.

Q. And that company was engaged in the business of manufacturing plastic fishing poles?

A. That is correct.

Q. Before going to work for that company you were employed by the Morgan Construction Tooth Company? A. Yes.

Q. For the period of May or June 1951 through Christmas day or through December of 1951, isn't that correct? A. That is correct.

Q. Your rate of compensation there was \$100.00 a week.

A. That was not compensation, that was a drawing account.

Q. It was a drawing account as a result of your having invested \$18,000.00 in the purchase of stock in the Morgan Construction Tool Company?

A. Both the president and I took a hundred dollars a [142] week as a drawing account.

Q. You invested \$18,000.00 in the company before you mentioned taking this drawing account, isn't that right? A. I don't see—

The Court: Was the drawing account against earnings of the company or against salaries, or commissions, or what?

The Witness: It was mostly against possible earnings of the company.

Q. (By Mr. Enright): Now, you did make an investment of \$18,000.00 in the company before you commenced drawing this hundred dollars a week,

(Testimony of Roy E. Hallberg.)

isn't that right? A. That is correct.

Q. Do you know a G. T. Gilliam of Altadena, California? A. I know of him.

Q. Is his business that of selling his services as an efficiency expert? A. That is correct.

Q. Did you, before going to work with Morgan Construction Tooth Company, work for a period of time or attempt to work for a period of time with Mr. Gilliam, in carrying on his business of consulting with business concerns?

A. My connection up there was more or less as a helper and—or giving him aid. I did not do any of the actual work out in the field. You asked me that question before. [143]

Q. In your deposition, and you did not remember it at that time?

A. I said no, definitely not; I didn't know what you asked me.

Q. Perhaps then, my words did not convey the exact act or thing you did. Now, will you explain what you did do, if that will aid you in answering the question? I do not want to limit you by a question.

A. The assistance I gave him was organizing a group of individuals to help and assist him in his actual work. At that time I was not capable of any sustained work.

The Court: You had some physical difficulty?

The Witness: Yes, I have been bothered for several years with a bad back that incapacitated

(Testimony of Roy E. Hallberg.)

me; over months on end I was in bed, and the times I got up were limited.

I don't do any physical work, and finally had an operation.

Q. (By Mr. Enright): Now, during that period of time that you were carrying on the activities, as you have described them, with Mr. Gilliam, you acquired a lot known as 85 Glen Summer Road in Pasadena, at about that time?

A. If I remember correctly, I had the lot.

Q. Well, you acquired the lot at 85 Glen Summer Road on May 29, 1947, being Document 901 of the official records of the offices of the County Recorder's office? Does that [144] help you at all in fixing the date?

A. Yes, that is approximately right.

Q. Did you build a house there? A. I did.

Q. And you sold that house on February 19, 1948? A. Approximately.

Q. Now, during that period of time you also acquired a lot at 90 Glen Summer Road on October 30, 1947, being Document No. 146 of the official records of the County Recorder's office?

A. That is correct.

Q. And you sold that lot and the house you built on it on June 17, 1952?

A. That is approximately correct, yes.

Q. Now, before acquiring the lot on April 29, 1947, you had been employed by the Garrett Company in New York for a period of 13 years, hadn't you? A. That is correct.

(Testimony of Roy E. Hallberg.)

Q. And that 13-year period covered the time from about 1932 or '33 to 1947?

A. That is correct.

Q. And your duties with the Garrett Company pertained to the marketing of wines?

A. That is correct.

Q. In no manner did your duties to the Garrett Company [145] pertain to the operating of apartment houses?

A. No; that is correct.

The Court: What was your compensation there?

The Witness: Well, the earnings ranged up to about \$40,000.00 a year net.

The Court: What do you mean by "net"?

The Witness: After I paid my expenses and whatever other expenditures had to be made.

The Court: You don't mean after taxes?

The Witness: No.

Q. (By Mr. Enright): You terminated that employment and came to California about March of 1947?

A. That is correct.

Q. And this \$40,000.00 a year you refer to was monies you received in the sale of wine or directing the sale of wine in and about the New York area?

A. Directing the sale of wine throughout the New York area, Metropolitan New York area and in New York State.

Q. Including Brooklyn?

A. Well, most people don't think Brooklyn is a part of the United States.

Q. Well, I do. Now, in any event, the sale of wine had nothing to do with the management of

(Testimony of Roy E. Hallberg.)

apartment houses, did it? A. Right. [146]

Q. The first apartment house that you had any connection with in California was at 509 Fair Oaks Boulevard, an apartment house in Pasadena?

A. I never had a building at 509.

Q. 1509. I misread my notes. Is that right?

A. That is correct.

Q. You acquired that house December 20, 1949, being the deed recordation of Document 116, on that date, the official records of Los Angeles County?

A. That is approximately correct.

Q. It was a 14-unit apartment? A. 16.

Q. You yourself owned it, did you?

A. I did.

Q. And you hired a manager? A. Correct.

Q. Your mother-in-law? A. That is right.

Q. And you disposed of that apartment house on November 29, 1950, being Document No. 1037 of the official records of Los Angeles County?

A. Approximately that.

Q. So for approximately 11 months you were owner of an apartment house at that address in Pasadena, California, or South Pasadena? [147]

A. That is right, yes.

The Court: Did you ever do anything with respect to the management of it?

The Witness: Well, we had a resident manager there, but so far as the actual managing the personal property there, doing things, ordering things done, yes, a lot of things I ordered done on the building.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): You ordered a lot of things done on these 14 apartments during the 11 months you had it? A. 16 apartments, yes.

Q. In addition to the 85 and the 90 Glen Summer Road and the 1509 Fair Oaks apartment house, you did acquire an unfurnished 4-family unit at 507 El Molino Street in Pasadena, California, on December 29, 1950, didn't you?

A. Approximately that time, yes.

Q. You and your wife jointly or individually, one of you owned that property alone, didn't you?

A. Well, I believe the record will state all these buildings were joint tenancies.

Q. Yes. And you still own that unfurnished 4-family unit?

A. There is one apartment there furnished.

Q. Those are all the properties that are in Los Angeles County that you had had any connection with when you were interviewed by this court?

A. In California? Yes.

Q. I said Los Angeles County. Because there are two down in Orange County, isn't that right, Mr. Hallberg? A. Yes.

Q. Those are single residences and one is a duplex or triplex?

A. One is a triplex and the other is a residence.

The Court: The triplex is residential property.

The Witness: Yes, it is in a residential neighborhood.

The Court: Are the triplexes for commercial use?

(Testimony of Roy E. Hallberg.)

The Witness: No.

The Court: Or for residence?

The Witness: It is for residences. People live in them. They are both furnished, incidentally.

Q. (By Mr. Enright): You moved to Orange County in 1952, didn't you? A. Yes.

Q. And after moving down there, you built this triplex or single residence, which came first, will you explain that? A. Triplex.

Q. And sold it, did you? A. No.

Q. You still own it? A. Still own it. [149]

Q. You built a single residence down there in Orange County then? A. Yes, that is right.

Q. Now, you have recited, have you not, to the court your experience in dealing with real property in California, in answer to my previous questions? A. Your previous questions, yes.

Q. The only business address you had, since you have come to California, was the address of the Morgan Construction Tooth Company in Pasadena, which you used during the period June or May 1951, to December 1951, isn't that correct?

A. I directed all my mail to my home.

Q. Well, did you advise his Honor before your employment that you did have a place of business over in Pasadena, a business address?

A. The address I used there was 509 South El Molino.

Q. This 4-family unfurnished residence property? A. Yes, I received mail there.

(Testimony of Roy E. Hallberg.)

Q. And that you represented to the court as being a place of business for you, is that right?

A. Well, it was an apartment house. I don't recall that I mentioned that as a business address, though.

Q. I have reference to the statement made on November 30th of 1953, the date of your appointment, that it was [150] represented to the parties by the court that you had a business address in Pasadena.

I assume you made that representation to the court, did you not?

Mr. Whyte: Objected to as calling for something that is outside the presence of this witness. He wasn't a party to any conversation between the court and yourself, Mr. Enright.

Mr. Enright: He was there part of the time. I will verify whether he was there at that time.

Mr. Whyte: I ask you lay a foundation he was present at any such conversation and knew anything about it.

Q. (By Mr. Enright): Now, directing your attention, if I may step up to the witness stand, to the transcript of November 30, 1953, at page 10 of the transcript, line 11, is where you answered the statement of the court concerning your qualifications, with the words:

"Mr. Hallberg: That is correct."

Now, pursuing that transcript over to page——

Mr. Whyte: Just a moment, Mr. Enright.

(Testimony of Roy E. Hallberg.)

Mr. Enright: Read any portions you want. I never misled a witness in my life.

I merely wanted to fix the point in that transcript on that day as being on page 10, that Mr. Hallberg was a witness in the chambers of this court at that time. [151]

Now, the representation concerning the business address was later on in the transcript, your Honor. It is on page 15.

Mr. Whyte: Well, if you are going to read into the record something standing alone, an answer by Mr. Hallberg, "That is correct," why, why don't you read the whole transcript, to show what he is answering, what "That is correct" has reference to?

I am going to request there be read into the record the whole conversation, to show what Mr. Hallberg was answering.

The Court: Mr. Whyte, I am going to consider what occurred at that time and place. I will read that transcript in connection with the matter now before me, before deciding the issue here.

I might also read some of the transcript of the principal trial in this action, since this proceeding is ancillary to it, and one can pick up a great deal of information concerning the properties managed from the transcript of the trial of the case.

Mr. Whyte: Thank you, your Honor. I wanted the court to have in mind what Mr. Hallberg was answering when he said, "That is correct."

The Court: We take evidence here, but I will

(Testimony of Roy E. Hallberg.)

read all these things before deciding this. There isn't going to be [152] any precipitant action.

Mr. Enright: I am disturbed, your Honor, about the making of a decision involving the reasonable value of this witness' services based upon evidence that is not presented herein, pursuant to the petition and the answer to the petition.

The Court: Are you objecting to the court's considering the evidence which was presented at the trial of Tidwell vs. Richman?

Mr. Enright: Yes. I believe it would be improper. I seriously make that point. Otherwise, we do not know upon what does the court base its decision.

The Court: I will tell you what I intend to consider from the record of that case. That record shows somewhat the character of the properties which came into the receivership. And I intend to consider that.

That record shows what was charged by Mr. Richman for the management of those properties. And it shows what experts, produced by Mr. Richman, thought would be a reasonable charge for the management of them. It shows what experts, called by Mrs. Tidwell, thought would be a reasonable amount, and it shows the general character of the property.

I think those matters I have alluded to may be properly considered. This proceeding cannot be isolated entirely [153] from the main action to which this is merely supplementary.

(Testimony of Roy E. Hallberg.)

Mr. Enright: My point being this, your Honor: That if the court is to consider the evidence in the main action, that it has just now stated, it would of necessity involve an examination into the qualification of the persons involved in the management fees.

The Court: Well, that was open to litigation in the main action and to a certain extent it was inquired into in the main action. No one waived their privileges of cross examination at the time of that trial.

We built up a transcript of several hundred pages. I don't propose to read it all, but I am going to refresh my memory on the parts to which I have referred in general terms here.

Mr. Enright: I had not quite completed my statement, your Honor.

The Court: All right.

Mr. Enright: My point was that the qualifications of those particular witnesses in their experience as property managers in this specific community alone was presented. And that would involve the whole transcript or the whole of the trial of the case, I am afraid.

And I submit it would be improper to go beyond this record we are developing here.

Q. (By Mr. Enright): Proceeding, now, Mr. Hallberg, [154] you do not deny that you did answer a question on page 10 of this transcript of November 30, 1953?

A. Correct.

(Testimony of Roy E. Hallberg.)

Q. So you were there in the chambers at the time you gave this answer? That is correct?

A. I was, yes.

Q. You remained in chambers after that answer, until at least myself left the chambers, because I was engaged in another trial?

A. So far as I know, I did.

Q. Now, directing your attention to page 15 of the transcript, commencing at line 3 through line 18, did you make the following statements:

“Q. (The Court): Yes. Now, if you gentlemen wish to consult with the Receiver whom I have indicated will be appointed, we will provide one of the rooms adjacent to the chambers for such consultation, so that you may orient him to immediately pending problems which you feel might enter into the employment he is about to assume.

“I know you have another engagement, Mr. Enright, but you might take just long enough to get an exchange of names, addresses and telephone numbers and the like. [155]

“I am going to suggest to Mr. Hallberg, whom I think has a place of business somewhere around—

“Mr. Hallberg. It is in Pasadena.

“The Court: And you live at Corona Del Mar?

“Mr. Hallberg. That is correct.”

You did make those statements at that time?

A. Yes. I was referring to 509 South El Molino.

The Court: Did you have any business there, other than the——

The Witness: The apartment house.

(Testimony of Roy E. Hallberg.)

The Court: —management of that building?

The Witness: The apartment building.

Q. (By Mr. Enright): That wasn't an apartment, was it, a 4-family unfurnished flat?

A. It is usually called an apartment building.

Q. Unfurnished, is that right?

A. One apartment is furnished.

Q. One unit is furnished. And there are four units in that building at 507 South El Molino?

A. That is correct.

Q. You call that an apartment?

A. I certainly do.

Q. All four of them were rented on November 30, 1953, weren't they? [156]

A. That is correct.

Q. The tenants were paying you rent?

A. That is right.

Q. And you call that your place of business, is that it?

A. I had access to a telephone there and also I received mail there.

Q. Now, directing your attention to your experience in Chicago, concerning the operation of properties, it was in the year 1930 or '31, isn't that correct? A. '31, yes; 1930-31.

Q. It was for a period of one year?

A. More or less. I think it is more. But I am not positive. That is quite a few years ago.

Q. You were employed by Gus Each, E-a-c-h, is that correct?

A. No, it is just Eich, E-i-c-h.

(Testimony of Roy E. Hallberg.)

Q. Mr. Eich was a bondholder of certain bonds issued by a bank at Chicago, isn't that correct?

A. He was a bondholder and receiver.

Q. I hadn't reached the receivership yet, Mr. Hallberg. Now, the bank became defunct or closed, isn't that right, and Mr. Eich, by virtue of his bonds, took over some of those properties of the bank, which were securing his bonds, isn't that it?

A. That is correct. He took them over as Receiver, though.

Q. You had never acted as a Receiver at any time, yourself, until this court appointed you, had you?

A. That is correct. I was handling the properties in receivership.

Q. Did you at any time advise this court, before your appointment or on December 2nd, when you took your oath, that you contemplated rendering an eight-hour day's service to the County of Orange?

A. I didn't contemplate rendering service to the County of Orange at that time.

Q. The question is did you advise the court of your intention or contemplation of going to work for the County of Orange?

Mr. Whyte: Objected to as calling for, as assuming facts not in evidence. The witness has testified he didn't contemplate going to work for the County of Orange at that time.

The Court: The question is whether he told the court that he had such contemplation, which is a

(Testimony of Roy E. Hallberg.)

different thing, and I think you will allow that question.

The Witness: I couldn't have told——

The Court: You can just answer, did you or didn't you?

The Witness: No, I couldn't have. [158]

Q. (By Mr. Enright): You were appointed Receiver on Wednesday and went to work for the County of Orange on Monday, didn't you?

A. Yes. I had no knowledge of going to work for the county.

The Court: On the following Monday?

Mr. Enright: Yes.

The Witness: No.

Mr. Enright: Following Monday, December 7th. The court order here is December 2nd. He was appointed and took his oath.

Q. (By Mr. Enright): You never informed the court at all at any time about going to work for the County of Orange?

A. I didn't know I was going to work for the County of Orange.

Q. Did you inform the court after you went to work for the County of Orange?

A. Not that I recall.

Q. In fact, you had told no one that you were devoting eight hours a day as a part of your employment at the County of Orange until your deposition was taken?

A. May I have that again?

Mr. Enright: Read the question, please.

(Testimony of Roy E. Hallberg.)

(The question was read.)

The Witness: I would like to have you state that [159] a little differently. Will you state that a little differently, please?

The Court: You just answer that the best you can. If it is an incorrect proposition, you clear it up.

The Witness: I will have to ask——

Mr. Whyte: You have a right to explain your answer, Mr. Hallberg. Answer the question and explain, if necessary.

The Witness: I will have to ask the reporter to please read that again.

(The question was re-read.)

The Witness: That is correct, so far as I know.

Q. (By Mr. Enright): At the time you were requested to act as Receiver in this matter by the court, you had then intended to delegate most of your work to Miss Cosgrove, is that correct?

A. I had intended to delegate the housekeeping to Miss Cosgrove.

Q. Did you inform the court of your intention of delegating what you call housekeeping to your wife, Miss Cosgrove? A. No.

The Court: We have gotten away from that 1931 transaction. I thought you were going into it while we were at the point, so we wouldn't have to return to it again. But, as I recall the evidence, it has not been gone into. [160]

At what rate were you compensated for that work?

(Testimony of Roy E. Hallberg.)

The Witness: I was compensated on a basis dependent upon the rents received from the various properties. And I don't recall what the amounts were now.

The Court: Can you recall approximately what your annual income was from that source during the year that you occupied that position?

The Witness: Your Honor, I just don't recall.

The Court: Was that a full time employment?

The Witness: Yes.

The Court: Or did you have other—

The Witness: No. I was working there full time on all the buildings.

The Court: Were the buildings exclusively apartment buildings, or did they include other types?

The Witness: They included various types. They were apartment buildings, apartment hotel, ordinary two flats, three flats, a couple of bungalows. They were scattered all over the north side of—northwest side of Chicago.

The Court: How did they compare in type of building—I don't mean all of them—but were there any that were comparable in some way to the class of buildings which were involved in the Richman properties?

The Witness: Yes, there was one apartment hotel up in Logan Square and it had furnished units, elevator, refrigeration [161] service; the physical aspects of the building were quite similar.

(Testimony of Roy E. Hallberg.)

The Court: To which one of the Richman properties?

The Witness: I imagine that would be classed more along the lines of the Oliver Cromwell. It was in a fairly nice residential district and this was out on the boulevard in the fair-income bracket neighborhood.

The Court: Were most of the apartment buildings in that earlier experience of yours buildings in a lower class than were involved in the Richman trust?

The Witness: Not necessarily. I believe on the whole they were on a par. They were brand new buildings and they were out in new neighborhoods.

They were not in the fringe areas. They were substantial buildings, all of them.

Q. (By Mr. Enright): There was only one of the properties that was an apartment hotel, isn't that right?

A. There was only one large one. There were, as I recall,—

Q. Your principal duty was trying to collect the rents from those people in 1931? A. No.

Mr. Whyte: Would you finish your answer? As you recall what? May the court please allow the witness to finish his answer? [162]

The Court: Finish the answer.

The Witness: We had several smaller buildings, probably had 10, 12 little furnished apartments; but they were small buildings.

As far as the last question was concerned, it

(Testimony of Roy E. Hallberg.)

didn't include only collecting rents. It was a complete management.

Q. (By Mr. Enright): That was the problem in 1931, though, wasn't it, collecting rent?

A. That was one of many problems.

Mr. Enright: Now, is that all your Honor desires to ask concerning Chicago, bondholder's rights?

The Court: That is all I had in mind. I am not interested in the bondholder's rights.

I am interested in the type of service which this man rendered there, what his experience was.

Q. (By Mr. Enright): Now, directing your attention to Mrs. Hallberg's experience. She graduated from the University of Minnesota, is that right?

A. That is correct.

Q. During the period 1937-1942 she carried on a business which you describe as investment counselor in New York, is that right?

A. That is correct.

Q. And she had two clients, to wit, a Dr. Austin Flint and Cox. [163]

A. Well, I am not familiar with the names of the clients nor the clients themselves.

Q. Well, might I ask you——

A. As I understand it, that is correct.

Q. Yes. That is Mrs. Hallberg's statement, isn't it?

A. I say, as I understand, that is correct.

Mr. Whyte: Objected to as being directly contrary to the language of the deposition. The language of the deposition is——

(Testimony of Roy E. Hallberg.)

The Court: If he is using the deposition, he is using it as notes. What the question was, was whether she had two clients by those names.

Now, that is what I understood it to be, which would be perhaps foundation for inquiring as to the nature of the services rendered them.

Now, I don't know how many clients the deposition might show, and I don't care.

Mr. Whyte: Very well. If your Honor has obtained the impression they are only two of her clients, I am quite satisfied. Thank you.

Q. (By Mr. Enright): Do you know whether or not she had any clients in addition to those two I named? A. I don't know.

Q. So far as you are concerned, those are the only two clients she had, is that right? [164]

A. I can't answer that, because I don't know.

The Court: Well, Mrs. Hallberg is present in the courtroom. The court will ask her to be available as a witness here, if you want to interrogate into it.

Q. (By Mr. Enright): Now, I take it she same to California with you after—she terminated investment business counseling in 1942. I suppose World War II stopped it, is that it? You don't know why, but she did terminate, is that it?

A. That is right.

Q. She came to California with you in 1947?

A. That is correct.

Q. Now, her only experience in decorating residential properties before coming to California, so

(Testimony of Roy E. Hallberg.)

far as you know, was decorating your home in New York?

A. She happens to have taken a course and some work with an institute in New York, of art and design; I do know that.

Q. What is the name of this institute of art and design that you know of?

Well, I will withdraw the question, if by these 60 seconds or so you have not remembered.

Do you know anything else about this training she had concerning apartment properties, other than what you have stated as of that time—— [165]

A. She has had that training in it. She has been interested in it for a good many years, and she has proven herself to be quite capable.

Mr. Enright: I move to strike "she has proven herself to be quite capable."

The Court: Granted.

Q. (By Mr. Enright): Now, after coming to California, her experience in so far as residential properties are concerned, was, shall we say, the mixing of the color and the decorations of 85 Glen Summer Road, that one?

A. I wouldn't say "mixing colors".

Q. She figured out the color scheme, is that it?

A. Color scheme, draperies, complete harmony of colors throughout the house.

Q. The same for 90 Glen Summer Road?

A. Yes.

Q. You have a swimming pool there, quite an elaborate home there at 90 Glen Summer Road?

(Testimony of Roy E. Hallberg.)

A. There was a swimming pool.

Q. Much better than the La Loma Apartments or of these apartments mixed up here?

A. It is a matter of opinion.

Q. Give us your opinion.

A. I lived over in Pasadena.

Q. You were managing, you undertook to manage in [166] excess of \$2,500,000.00 of apartments here. Is it because of this Glen Summer Road experience, that it qualified you, is that your opinion?

A. Of course not.

Q. It didn't help you at all or help her at all managing these apartments, did it?

A. Just additional experience.

Q. Now, the additional experience was the 14 units at 1507 Fair Oaks, is that the next experience she had? A. 16 units again.

Q. 16. Pardon me. For the 11 months, though.

A. She assisted me there quite materially.

Q. And the next experience would be the 4 units at El Molino Street? A. Yes.

Q. And the single residence and triplex in Orange County? A. Correct.

Q. Now, in addition Mrs. Hallberg has had experience as an employee of the County of Orange, too, hasn't she, in the hospital?

A. Oh, yes.

Q. When was that?

A. Oh, I think that was during the summer of 1953.

Q. You now have enumerated, have you not,

(Testimony of Roy E. Hallberg.)

Mrs. [167] Hallberg's business experience, other than that she does hold a real estate broker's license?

Mr. Whyte: If you can recall, Mr. Hallberg.

Mr. Enright: Thank you, Mr. Whyte.

The Witness: Well, her business experience with the County of Orange took in quite a bit of accounting work there and supervising of accounting.

Q. (By Mr. Enright): That was in 1953?

A. Yes.

Q. The next subject, Mr. Hallberg, will be the matter of the Oxyaire. You have that subject in mind? A. Yes.

The Court: Do you want to take the morning recess, Mr. Enright, or do you want to go straight on through?

Mr. Enright: I believe I could organize it and expedite it, but if the witness wants to take a short recess——

The Court: We will take a brief recess.

(Short recess taken.)

Q. (By Mr. Enright): Among the files that were turned over to you by Mr. Richman on or about December 3 or 2, 1953, was one involving the Air Pollution Control, Inc. contracts?

A. That is correct.

Q. Now, I have shown this letter dated December 1, 1953, to counsel during recess. I want to use it to refresh [168] the witness' recollection.

Approximately a week, or, I will say not exceeding 10 days after December 1, 1953, you received

(Testimony of Roy E. Hallberg.)

an authorization from the County of Los Angeles Air Pollution District concerning installation of pollution control facilities at one or more of the apartment houses? A. That is correct.

Q. Now, you next received, did you not, engineering drawings specifying the equipment that was to be installed by the Air Pollution Control, Inc., a corporation? A. That is correct.

Q. Now, after receiving these files pertaining to the Air Pollution Control, authorization or order, you turned the files over to your attorney, Mr. Whyte, about December 24th?

A. That is correct.

Q. 1953. Did he then give you an opinion during December 1953, as to what were your duties as a Receiver with respect to the orders of the Air Pollution Control authority of the County of Los Angeles?

A. Yes, by the end of December he had given me that information.

Q. What was his opinion?

A. He stated that the contract signed was perfectly valid, to go ahead. [169]

Q. Now, on January 13, 1954, or within 24 hours after that date, you were informed by your agents, I assume, that a citation had been issued by the Air Pollution Control District, Los Angeles Control District, Los Angeles County, concerning one of the apartment houses, is that correct?

A. That is correct.

Q. Which apartment house was it?

(Testimony of Roy E. Hallberg.)

A. I think it was 418 South Normandie, the Cromwell.

Mr. Whyte: Speak up, Mr. Hallberg.

The Witness: I am sorry.

Mr. Whyte: What apartment house was it?

The Witness: Oliver Cromwell.

Q. (By Mr. Enright): And upon receiving that citation, was your next act that of phoning to the Air Pollution Control, Inc.?

A. That is correct.

Q. You kept a diary, did you not, of some of your activities as Receiver? A. Definitely.

Q. And you have a copy of it there?

A. Yes.

Q. Now, this diary consists of notations you made about the time the occurrences are reported in the diary? A. That is correct.

Q. And it consists of notations made after consultation [170] with your wife at home in the evening, is that right?

A. No. On this one, I think I was——

Q. Most of the entries in this diary are of that nature, are they not?

A. Not all of them, no.

Q. I didn't ask you about all of them. I just want to find out the method of keeping this diary.

It was generally in the evening when Mrs. Hallberg returned from Los Angeles that you would discuss the problems of the day and make notations in the diary, isn't that it, generally?

A. Those entries were made in the evening after

(Testimony of Roy E. Hallberg.)

we both returned home. It is a composite of the work, for the most part, that was accomplished during a particular day.

Q. And it does not reflect who accomplished the work? A. No, it does not.

Mr. Enright: I had two photostats made. If the witness desires to keep his own original, it is all right with me.

I would like to have a copy made a part of the record. What would be the convenience of counsel and the witness?

Mr. Whyte: Only one copy was furnished me. With the original and my copy of the deposition, if it is convenient to the court, I will surrender my own copy and make it a part of the record, simply getting along as best I can [171] without one.

Mr. Enright: Mr. Hallberg has a copy.

The Witness: I have the original.

Mr. Enright: I will take the original, if you wish.

The Court: The regular legal course, in the absence of some agreement between counsel otherwise, would be to have the original received into evidence.

Mr. Enright: I seek the convenience of the witness and his counsel as to whether I should take the original.

Mr. Whyte: May I interrogate the witness for a moment?

The Witness: Yes.

Mr. Whyte: Do you have anything else in that

(Testimony of Roy E. Hallberg.)

notebook which you desire to keep, Mr. Hallberg?

The Witness: Everything in here pertains to the activities on the receivership.

Mr. Whyte: You have no objection then——

Th Witness: No, none whatsoever.

Mr. Whyte: It will have to be placed in the court's files.

Mr. Enright: May it be marked next in order, defendants' exhibit.

Clerk: Defendants' B for identification.

(Said document was marked Defendants' Exhibit B for identification.)

Mr. Enright: I would like to offer it in evidence, as [172] I do not anticipate too many exhibits.

The Court: I understood it had been received in evidence.

Mr. Enright: Thank you, your Honor.

(Said document marked Defendants' Exhibit B was received in evidence.)

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BEGINNING
MONDAY

Appointments & Memoranda

ENDING
SUNDAY

Date

Date

Monday 12/13		Thursday 12/13	
PM	AM	PM	AM
9 M	10 N	9 M	10 N
10 D	11 A	10 D	11 A
11 Y	12 Y	11 Y	12 Y
<p>12/13/30</p> <p>9:30 Left Mr. Perkins office and Jungo Tolson Court? 10 Did not arrive until 11:14 AM? 11 Ray Garrison picked up on 12 Relations and of his bookkeeping and acc'ts methods. Stayed with Mr. Perkins until 2:30 13 Stopped payment on Mr. Dulles 14 Bill check on 12/13 not correct & made out to Perkins (Kirkley)</p>		<p>12/14 Friday</p> <p>9:00 Met Mr. Dulles and over 10 arranged for office at 11:14 11 Commence place - Trade 12 Calls on Mr. Briggs collect 13 rents & inspecting same 14 made deposit at 11:14 15 Bank</p>	
<p>DEC. 1</p> <p>9 Met John White 10 And started 11 to work with 12 of partnership. 13 Accepted 14 Union Trust 15</p>		<p>12/15 Saturday</p> <p>9 10 11 12 13 14 15</p>	
<p>12/12</p> <p>9 Arranged for 10 City of New York & White 11 to start as Queens 12 City of New York 13 exchanged - 75000 14 fidelity deposit Co. 15 1/2 mil. @ 3000</p>		<p>12/16 Sunday</p> <p>9 10 11 12 13 14 15</p>	
<p>12/13</p> <p>9 Arranged for 10 City of New York & White 11 to start as Queens 12 City of New York 13 exchanged - 75000 14 fidelity deposit Co. 15 1/2 mil. @ 3000</p>		<p>12/17 Monday</p> <p>9 10 11 12 13 14 15</p>	





BEGINNING
MONDAY

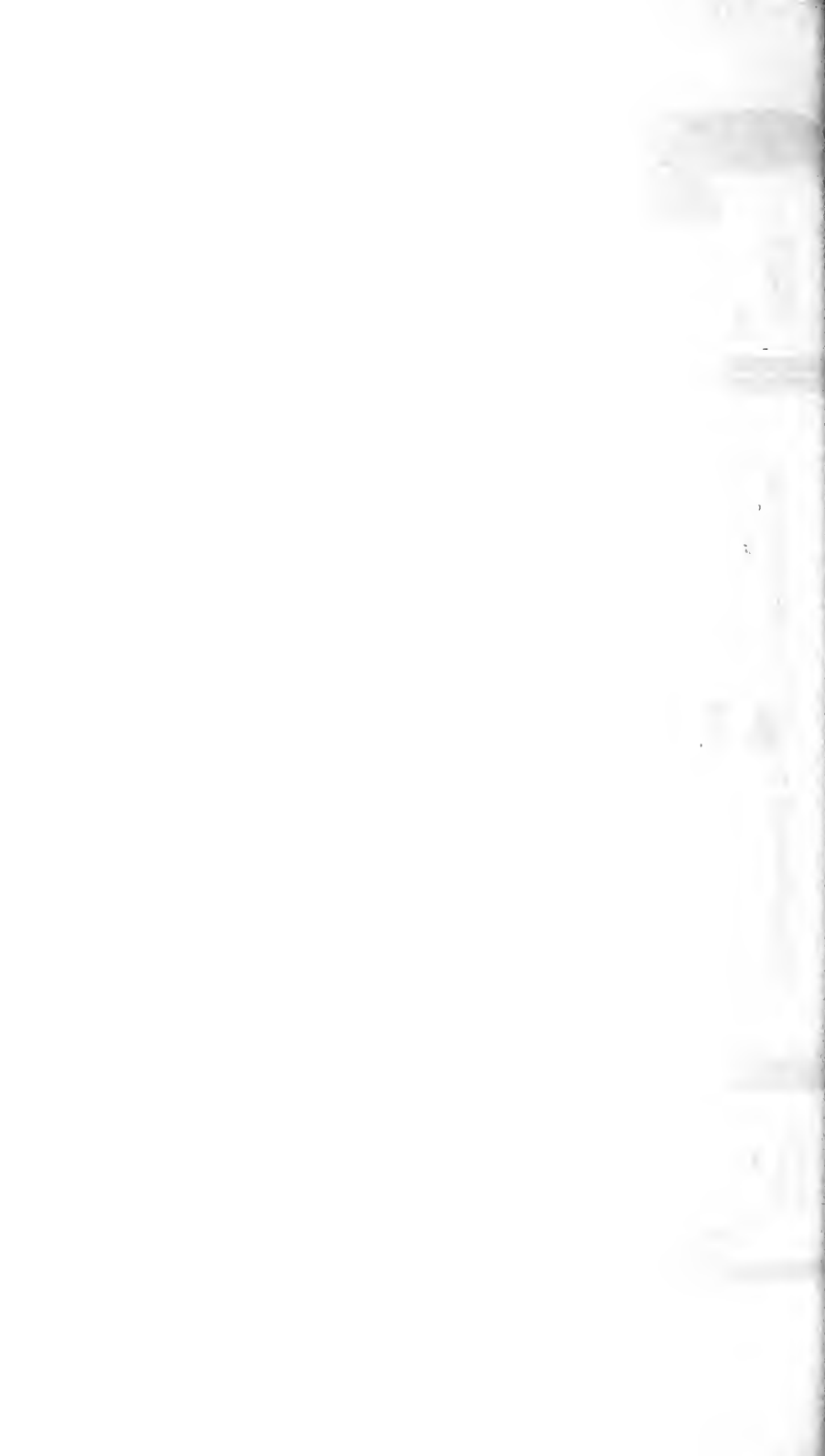
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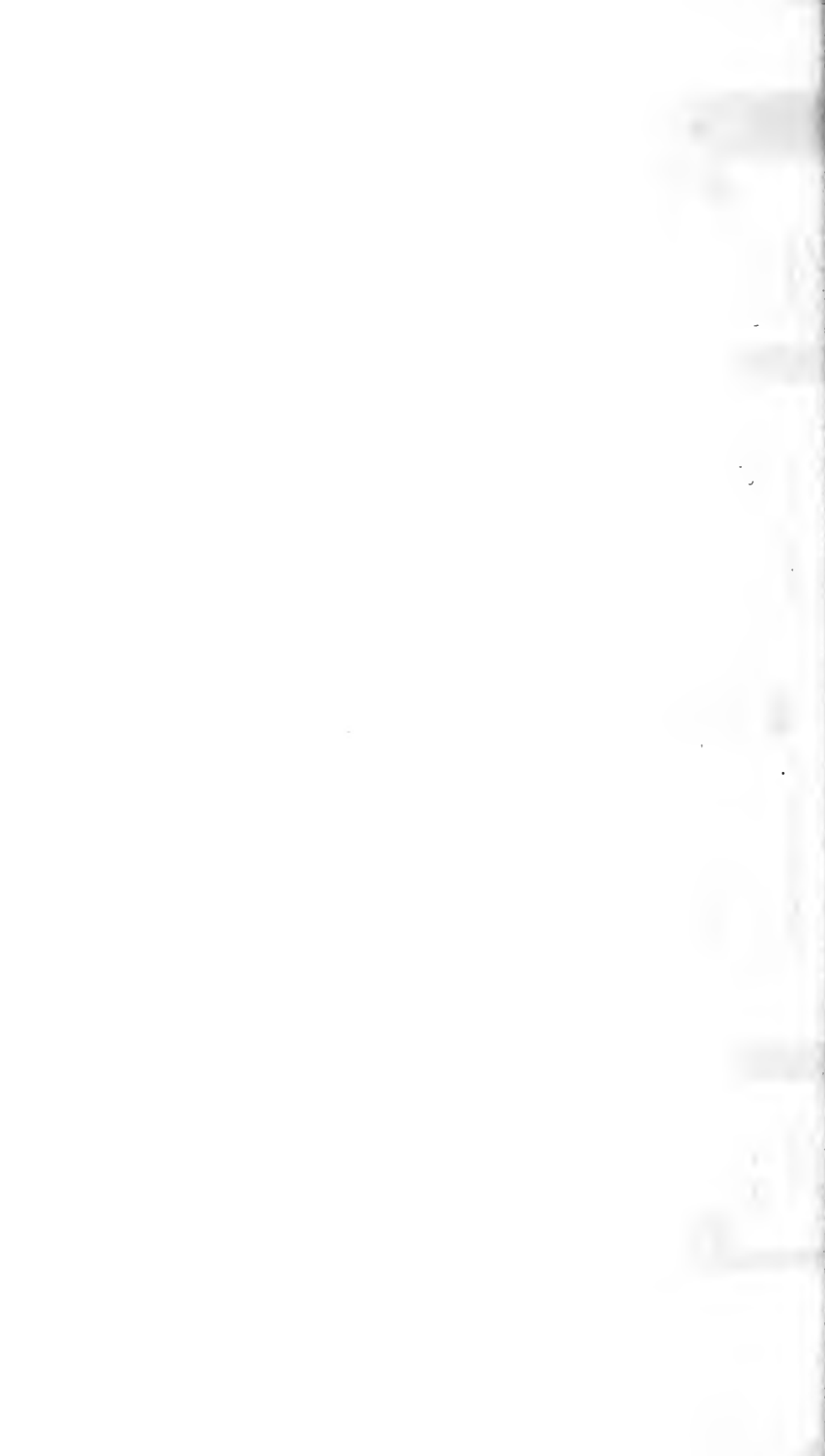
Appointments & Memoranda

WEEK
M T W T F S SENDING
SUNDAY

Date

Monday		Thursday	
9 AM	PM	9 AM	PM
10 Shopped Barber and 301 PM		10 Spent day working	10
11 Called on Brother		11 Called and spoke to	11
12 and other friends		12 future methods of	12
13 Dr. Santer at his on		13 Working Barber	13
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BEGINNING
 MONDAY
 Date 21
 Appointments & Memoranda
 WEEK
 A B C D E F G H I J K L M N O P Q R S T U V W X Y Z
 Date 31
 ENDING
 SUNDAY

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Jan BEGINNING MONDAY
Date 1/8

Date 2/

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Appointments & Memoranda

ENDING
SUNDAY
Date 28

BEGINNING
MONDAY
Date 25

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(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Directing your attention to January 13, 1954, you made the entry that evening, did you not, as follows:

“Received notice re: Oliver Cromwell incinerator Oxyaire V. P. said he would handle with authorities. Urged him to get on our job. Said drawings not received.”

That was your entry for that day concerning the Oxyaire matter, wasn't it?

A. Part of it.

Q. Was there more? Read it, sir, if you will “Harrison”—Does that pertain to Roy Harrison —“to get them——”

A. “Reminded——”

Q. “——with a letter (outlined contents for letter)”, is that right?

A. That is right.

Q. At that time the drawings were a part of your files, weren't they? [173]

A. They were a part of the files, but they weren't supposed to me. Harrison had been instructed to send them on.

Q. Now, I call to your attention a letter dated January 22, 1954. Does the reviewing of this letter refresh your memory?

It wasn't until January 22, 1954, you did transmit the drawings to Oxyaire?

The Witness: Will you read the question, please, Miss Reporter?

(The question was read.)

The Witness: The instructions were given to Harrison better than a week prior to the sending

(Testimony of Roy E. Hallberg.)

out of that letter. The letter went out on that date. Do you want to get this in evidence?

Q. (By Mr. Enright): Your next activities concerning this situation by the public authorities, of this community, on that subject, occurred on January 27, 1954, when you communicated with your attorney, Mr. Whyte, that a criminal complaint had been issued. I don't think you have it in your notes, have you?

A. It is not in there.

Q. You didn't make an entry of that on that day. I would call to your attention Mr. Whyte's time sheet for January 27th, if he will make it available to you, and that might reveal you did communicate with him on that day. [174]

A criminal complaint was then pending against Mr. Richman and your manager?

Mr. Whyte: If I may show the witness my time sheet.

Mr. Enright: Oh, certainly. I just want to get the facts as to the performance of this receivership.

Mr. Whyte: My time sheets shows Mr. Enright telephoned, "Call from Harrison re: problems involved in preparing Receiver's first report. Also criminal citation for alleged violation of smog regulations".

The time sheet is dated January 27, 1954.

Q. (By Mr. Enright): Did you direct Harrison to communicate with Mr. Whyte?

A. No, on that date I did not.

(Testimony of Roy E. Hallberg.)

Mr. Enright: Now, to complete the record, may it be stipulated that on Friday afternoon at 4:50 p.m., January 29th, your office informed Mr. Richman's office he would be in criminal court on February 1st on this citation, the following Monday?

Mr. Whyte: If you will allow me to refresh my recollection from my time slips.

Mr. Enright: Certainly.

Mr. Whyte: My time slip for the 29th shows certain entries in regard to this smog control matter. "Telephone call from Harrison re: Criminal citation for violation of smog regulations. Telephone call from Mrs. Hallberg re: [175] Efforts being made to dismiss criminal citation for violation of smog control ordinances. Telephone call to Mr. Hall in office of Air Pollution Control District re: Citation for violation of smog ordinances."

And the incident you mention is not noted on my time slip, but I recollect that some time between 4:00 and 5:00 o'clock in the afternoon I telephoned, I believe, both your office and Mr. Richman's office and was unable to locate either one of you, and left word at Mr. Richman's office that he was named as a defendant in a criminal complaint with reference to the incinerator at the Oliver Cromwell.

That the hearing was to be held the following Monday morning, February 1st, in one of the departments of the Municipal Court. Is that satisfactory?

Mr. Enright: Yes, that is satisfactory.

Q. (By Mr. Enright): Now, did you, Mr. Hall-

(Testimony of Roy E. Hallberg.)

berg, instruct your attorney to instruct Mr. Richman or myself not to talk to Mr. Harrison concerning this matter? A. I don't recall.

Q. You discharged Mr. Harrison after this smog incident, didn't you?

A. It just so happened it came about after that time, yes.

Q. It just so happens you were informed that Mr. Richman and I had gone out to see Mr. Harrison on the [176] Saturday, the 30th of January, you knew that, didn't you?

A. I didn't know that until several days after, but I found out inadvertently or a roundabout way you had been out there.

Q. And shortly thereafter Mr. Harrison was discharged, wasn't he? A. That is true.

Q. You, I assume, relied upon the advice of your attorney—strike that.

Did your attorney advise you in any manner as to the criminal aspects of this citation issued January 13, 1954?

A. I knew it was quite serious. I do not recall that I had any conversation with him about the criminal aspects of the situation.

Q. Are you limiting your answer, may I inquire, to what you personally heard Mr. Whyte say to you, or are you including communications by Mr. Whyte to your secretary, Mrs. Hallberg?

A. I am trying to recall any of my communications. I don't recall of any.

Q. Did Mrs. Hallberg inform you in any man-

(Testimony of Roy E. Hallberg.)

ner, between the period January 27th, that is, the date of the criminal complaint being filed, and February 1st date of this hearing over in Municipal Court, as to any advice she obtained from your attorney? [177] A. No.

Q. Did you advise your attorney of the issuance of that citation on January 13, 1954?

A. Yes, as far as I know I did.

Q. Now, I have a few questions here that we may be able to clear up quite hurriedly, if you would have available to yourself your accounting. Do you have a copy of it, Mr. Hallberg?

A. I don't know what you are referring to, Mr. Enright.

Q. That is the accounting you filed in court here. I will try and locate the original.

I direct your attention to page 3, line 17 through line 22, and to that portion of it appearing on line 19, where you state:

"Rendered and performed by him or his agents in carrying on the normal business and affairs of said former trust."

You have that portion in mind? A. Yes.

Q. Now, by these words, "him or his agents", do you mean that the things that were alleged to have been performed in this petition were done by the agents or yourself? A. That is correct.

Q. And there is no attempt on your part in this [178] petition to identify which one of the services enumerated in the petition was performed by your-

(Testimony of Roy E. Hallberg.)

self, as distinguished as being performed by an agent. A. That is correct.

Q. When you took office as Receiver, either before or after your qualifying as a Receiver, on December 2, 1954, you retained in your employ the five managers that had been running the apartment houses, didn't you? A. I did.

Q. You hired and retained Mr. Roy Harrison?

A. I did.

Q. Who had been acting as Mr. Richman's secretary?

A. I understood he was Mr. Richman's bookkeeper. That is all right.

Q. He took dictation quite quickly, didn't he, in your experience as a Receiver?

A. I didn't dictate to him. I wrote them out and told him what I wanted done.

Q. You would write your instructions out, is that it? A. Yes.

Q. In addition to Mr. Harrison, there were no changes in the personnel, other than your employing Mrs. Hallberg or her rendering services along with you, is that right?

A. In the office, yes, or under my control. There were other changes out in the field. [179]

Q. I am speaking now only of personnel, employees, full time employees, if I may put it that way, as distinguished from independent contractors, like plumbers and painters.

A. I appreciate that. There were changes out on some of the apartments.

(Testimony of Roy E. Hallberg.)

Q. But not in the managers, the five managers remained? A. That is correct.

Q. You didn't change those? A. No.

Q. You took Mr. Richman's bookkeeper?

A. Correct.

Q. And Mrs. Hallberg commenced assisting you, is that right? A. That is correct.

Q. Are there any other persons included in your words here, "him or his agents", than the five managers, Mrs. Hallberg and Mr. Harrison, that performed these things that you say you performed? A. No other than Mr. Whyte.

Q. Oh, yes. I take it he only went with you around to the apartments. He spent some time doing that, didn't he, about six hours, the first day, is that right?

A. Well, I don't know now. He went with me, yes, [180] that is true.

Q. Did you ask him what his rate of compensation would be? A. No.

Q. As a matter of fact, Mr. Whyte is your attorney in other litigation, isn't he?

A. Correct.

Q. That is, the Morgan Construction Tooth Company litigation filed back in 1952?

A. He is assisting me on that, yes.

Q. And he was not associated with O'Melveny & Myers until shortly before you were appointed Receiver, was he?

A. Will you state that question again?

Mr. Enright: Will you read the question, please?

(Testimony of Roy E. Hallberg.)

(The question was read.)

Mr. Whyte: Do you understand the question?

The Witness: No, I do not.

The Court: I don't, either. I wonder, is the question whether he was not associated until just before the receiver started, or is it something else?

Q. (By Mr. Enright): You are familiar with the fact, are you not, that on November 30, 1953, at the time the court rendered its decision the representation was made that Mr. Whyte had been until then, very recently, been associated with O'Melveny & Myers? [181]

A. That is correct.

Q. You, after that meeting, advised the court he was then leaving or had just left O'Melveny & Myers?

A. He had left a short while before.

Q. As a matter of fact, he had left, to your own knowledge, as early as January of 1952?

A. I don't know.

The Court: What difference does it make? We all have known Mr. Whyte around these courts for some time as being up here on behalf of O'Melveny & Myers?

What difference does it make whether he was there or with Gibson, Dunn & Crutcher or whether he was associated with you?

Of course, we wouldn't want an attorney associated with one of the parties litigants here or their counsel, but as to what firm he was with, I don't see that it makes much difference.

(Testimony of Roy E. Hallberg.)

Mr. Enright: Well, it is a part of the representations that were made at that time, your Honor. I think he then stated, it is my understandings, he was then associated with that firm. I would not further investigate into the matter. That is the record.

The Court: I understood he had been but recently with that firm. What you mean by "recent" varies with different people and in different situations. [182]

I don't think it would make much difference to a court if he had been with them two years ago or whether he had been two months ago. He was at one time with that distinguished law firm.

Mr. Whyte: For the record, your Honor, I left O'Melveny & Myers as of January 1, 1953, having been there for almost exactly 10 years.

Mr. Enright: Now, for the record, I will quote from page 12 of November 30th transcript, line 6:

"The Court: What I understand he has in mind is the selection of an attorney who is about to leave them——

"Mr. Hallberg: He has just left.

"The Court: ——for the purpose of forming his own legal practice. What is his name, Mr. Hallberg?

"Mr. Hallberg: John Whyte. That is W-h-y-t-e."

Q. (By Mr. Enright): Did you discuss with or negotiate in any manner with Mr. Whyte as to what would be his compensation for rendering services to you as Receiver? A. I did not.

(Testimony of Roy E. Hallberg.)

Q. Have you any arrangements or agreement with him as to his services in representing you in the Morgan Tooth Company litigation? [183]

Mr. Whyte: Objected to as completely immaterial, your Honor.

The Court: Sustained.

Mr. Enright: I understand there is a petition here seeking compensation on the part of Mr. Whyte. It is relevant to that.

The Court: Why? I am not going to allow Mr. Whyte anything except for services rendered in this case.

Mr. Enright: Is the court going to consider his rates of compensation in any manner in fixing that fee?

The Court: I am going to consider what, in good conscience, these parties should have, considering the services they rendered, the importance of the assignment, whether they carried it out well or whether they did not carry it out, the amount of harassment and vexation attending the duties of the position and so on.

Mr. Enright: I understand the law to be an element in fixing attorney's fees is the rates of compensation in the community.

The Court: I don't know what that Morgan case involves, and I am not going to take what he charged for services in that case as a guide for what he should get in this.

As to the going rate of payment of attorneys in the community, when they are appointed by a court

(Testimony of Roy E. Hallberg.)

to serve in capacities of this kind, I am more interested in that than I [184] am in what he received from Mr. Hallberg in some other case.

Q. (By Mr. Enright): Now, directing your attention to your petition, page 12 thereof, and to line 32, and what would be 33, my question is: You did not collect the rents for the days February 26, 27 and 28, 1954? A. I did not.

Q. Is that correct? A. I did not.

Q. And at the time you verified this petition, it was your estimate and belief that the amount was approximately \$2,000.00 that you had not collected?

A. That is an approximate amount. It may have been \$1,000.00, it may have been \$1,500.00, it may have been \$2,000.00.

There was no way I could tell when that rent would be due—or, would come in.

Q. As of February 26, 1954, or the morning of February 27, 1954, you had been informed of the terms and conditions of the order of this court, made on February 26, 1954, had you not?

The Witness: Have you got that in here, John?

Mr. Whyte: Yes. I don't find the order of this court of February 26, 1954, in this file. If I may look at my own file, I think I can locate it.

The Court: Counsel, we haven't finished that jury case [185] that held you up a little while. We are going to finish it this afternoon, except for instructions to the jury.

I will start instructing the jury at 9:30 tomor-

(Testimony of Roy E. Hallberg.)

row, and I will probably be through by 10:15 or so.

I think it would be safer if we figured on getting here at 11:00. We will begin this case tomorrow at 11:00 o'clock. Please let's not try to make a career of it. It is the sort of thing that should have been over by now. It is the sort of thing that is customarily handled on a Monday motion calendar.

I know there are several issues here. I haven't heard anything about the search you will want to make yet, and that seems to me to be the most important thing.

Mr. Enright: Could I ask a question then?

Q. (By Mr. Enright): How much compensation do you personally feel you should receive, Mr. Hallberg?

A. Well, in my petition I am leaving that entirely up to the court.

Mr. Enright: This, we understand, your Honor: They won't state, in accordance with the court rule. They have asked us to defend against what might be reasonable.

We have to get all the facts out. If they won't tell us what his time is worth, there is nothing we can do but develop all the facts.

The Court: We will stand in recess until 11:00 o'clock [186] tomorrow morning.

(Whereupon, at 12:00 o'clock noon, Thursday, May 13, 1954, an adjournment was taken to Friday, May 14, 1954, at 11:00 o'clock a.m.)

* * * * * [187]

ROY E. HALLBERG

called as a witness on his own behalf, having been previously duly sworn, resumed the stand, and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Enright): Mr. Hallberg, I have caused to be placed before you the original order of this court bearing date February 26, 1954. Do you see that document?

A. I didn't hear your question.

Q. You have the document before you?

A. Yes, I have the document; I have the document, yes.

Q. Bearing in mind that is February 26, 1954, were you advised by your attorney on February 25, 1954, that the plaintiffs and the defendants in the main action had arrived at a settlement?

A. I had a conversation on that particular date regarding a conference that you were going to have the following day in court.

Q. That is right. Concerning the subject matter of settlement between the plaintiffs and the defendants?

A. I don't know what the subject matter was. It was just a conference you were leaving here.

Q. On the following day or on February 26th, were you informed by Mr. Whyte, your attorney, or by Mrs. Hallberg, of the fact that a settlement had been made?

A. I think a settlement was reported that evening.

(Testimony of Roy E. Hallberg.)

Q. Yes. And at that time were you advised by your attorney that the court had made the order of February 26, 1954, relieving you of your active duties of management?

A. That is correct.

Q. Of the five apartments, or the trustee assets?

A. Yes.

Q. Did your attorney also inform you that you were to only retain the money in the banks and under your control? A. I believe he did.

Q. Did he also inform you that the order was to be effective at 5:00 p.m. on Sunday, February 28, 1954? A. I don't recall that.

Q. Well, do you recollect that you were to have control of the whole property and all the assets until Sunday evening, or 5:00 o'clock, Sunday, February 28th?

A. I don't recall that. The only thing I remember was that the receivership was being terminated, and that came to me Friday night.

Q. Did you read that order there that is before you? I mean a copy of it, of course, the February 26, 1954 order?

A. I read it later, yes. [190]

Q. Did your attorney read it to you on February 26th, when you had a conversation with him in the evening?

A. I don't recall his having read it verbatim to me.

Q. But he did read the order, as best you can recollect, the substance?

(Testimony of Roy E. Hallberg.)

A. He gave me the sum and substance of it.

Q. Now, directing your attention to your first and final report and petition for allowance of fees, do you desire the original, or is there a copy available?

A. I have a copy in here (Indicating).

Q. You have already testified concerning the \$2,000.00 figure shown on page 12 of the petition, that is, the receipts for the days of February 26, 27 and 28, 1954?

A. That was an approximate—it was an estimate. It isn't factual.

Q. Well, it is your best judgment when you verified the petition?

A. That is correct.

Q. And based upon your acting as receiver in this matter, have you made an audit since then to ascertain the amount or done anything?

A. No.

Q. Now, directing your attention to Schedule B, the first page thereof, you will note that there is under the column, "Imprest Petty Cash" \$785.00, is that correct? [191]

A. That is correct.

Q. Now, as of February 26, 27, and as of 5:00 o'clock p.m., February 28, 1954, there was \$785.00 of petty cash, wasn't there, in the hands of your agents or yourself as Receiver?

A. Not necessarily.

Q. How did you ascertain this figure of \$785.00 that you have shown in your accounting?

A. That figure is the amount of cash that was

(Testimony of Roy E. Hallberg.)

on hand at each building for them to pay small out-of-pocket expenses.

Q. When you use the pronoun "them" you mean your managers or the managers in each building?

A. I am referring to the buildings that these amounts are credited to.

Q. But it would be the manager of each one of the buildings? A. That is correct.

Q. And they were your agents, were they not?

A. That is correct.

Q. That \$785.00 was under your control?

A. That is correct.

Q. You did not take possession of that \$785.00, you left it with the managers, is that correct?

A. That is correct. For one reason. That reason [192] being that that was a part of their working properties of the building.

Q. So far as you know, Mr. Hallberg, the plaintiff, Lyda Tidwell or her agent, Mr. Udall, or some one of her agents, still have that \$785.00, is that right?

A. So far as I know, yes. They have what represents \$785.00; either cash or receipts.

The Court: How did they get it?

The Witness: That was left in the building—the money was left in the building. There was an audit made of it. In the operation of the building there are a lot of expenditures made for small items, and they would have to have receipts or cash to make up the amounts as shown here. And they

(Testimony of Roy E. Hallberg.)

use that money for cashing checks, and things like that.

Q. (By Mr. Enright): As a matter of fact, you did, Mr. Hallberg, during the weekend of Friday, February 26th, through Sunday, February 28th, make out checks on the receivership account, to build up the amount of money that these managers had, to equal \$785.00? A. That is correct.

Q. You actually issued checks upon the receivership account?

A. That is correct. However, they may have still paid out that before the end of the month.

Q. Of course. I am only making a point that there [193] is \$785.00 under your control that can be accounted for.

Mr. Enright: Insofar as the rights of Lyda Tidwell and Frederick Richman are concerned, it is a charge against her that I feel this evidence clearly proves.

The Court: She got that amount of money or approximately that amount of money, which had come in, as I understand this witness, that he left in the apartment houses when he surrendered them, because he considered it part of operating cash in the drawer.

Mr. Enright: I appreciate that is what he considered it.

The Court: That doesn't settle to whom it belonged.

Mr. Enright: Yes. Nor does it, your Honor, I feel, settle the requirements of the court order and

(Testimony of Roy E. Hallberg.)

the stipulation upon which it was based, that he was to retain control of monies in bank and all monies under his control; and this is \$785.00 he did not retain.

Mr. Powsner: At this point I think that I should object for the record to this line of testimony, not so much for the purpose of excluding it from the record, but simply to register plaintiffs' point of view, that the several items, many of the items claimed as surchargeable amounts against the Receiver, are actually in dispute between the plaintiffs and defendants.

As Mr. Enright said he thinks this evidence establishes a charge against the plaintiff, not Mr. Hallberg, I think it [194] should be kept in mind these are items in dispute, which are to be determined in a subsequent proceeding, I believe a pre-trial set for June 18th, and I don't think they are to be determined or to be assessed against Mr. Hallberg in this proceeding, any of these items.

There are several items, whether or not they were paid out in violation of the order, the point is that the benefit, if there is a benefit, has accrued either to the plaintiff or to the defendant. And it is a matter of dispute between them, as to the amount of the funds to be divided between them, and as to who is to be surcharged for these various items. I don't think it is material to surcharging Mr. Hallberg.

The Court: It might be. The objection is overruled.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Now, directing your attention, Mr. Hallberg, to Exhibit IV-2 of your Schedule B, I call to your attention under the column "Other" the amounts of money as being "Mortgage Payment-Interest" \$627.72 and principal \$1,399.53.

Those two amounts total \$2,027.25 and represent a payment to the holder of the note secured by trust deed upon the Oliver Cromwell Apartments, is that correct? A. That is correct.

Q. Now, the payment was due and payable on March 1, 1954, is that correct? [195]

A. That is correct.

Q. Now, you paid that by check dated February 27, 1954, did you not?

A. That is correct.

Q. It was received by the payee in March?

A. That is correct; should have been received there. It was mailed that day.

Q. We could quickly ascertain it.

A. The stamp on there doesn't necessarily mean it was received that day. It may have been held a day or two before it was deposited in the bank.

Q. Yes. But the previous payments you had made on this encumbrance you didn't pay—in the month of January you paid on a check issued January 3, 1954?

A. That is correct. As you recall, the funds were quite limited at that time, just having paid a fair-sized tax bill.

(Testimony of Roy E. Hallberg.)

Q. Would you like to see your statements of the bank balances?

A. I know what they are.

Q. I will show them to you and see how limited they were.

The Court: I am getting lost, Mr. Enright. Just what are you trying to prove now? I am off the path.

Mr. Enright: Well, perhaps it is collateral. The [196] witness is volunteering his reason for having paid the money.

The basic point involved is this: That there were Two Thousand Twenty-Seven Dollars and I think it is Twenty-Five Cents, whatever that exact amount is, that was paid out by the Receiver after the court order of February 26th, and that, too, is the sum of money which is paid to the holder of the encumbrance upon the Oliver Cromwell, being a payment due in March, and Lyda Tidwell has received the full benefit of that Two Thousand plus dollars out of this fund.

It, therefore, will be our position that, one, the Receiver violated the court order of February 26th, and, two, when and if issue is joined involving the dispute between Lyda Tidwell and Frederick Richman, under their contract of settlement dated in February 1954, that they will have to settle this difference out of the balance of the money on hand.

The Court: Your main point here is that this was money paid out of the trustee's fund for the benefit of Lyda?

(Testimony of Roy E. Hallberg.)

Mr. Enright: Yes, your Honor, that is the dollar effect of it.

The Court: And then there is a question then of whether Mr. Hallberg violated the court order in paying it.

Mr. Enright: Yes, your Honor. May I call it to a degree negligence on the part of Mr. Hallberg or his advisers in not properly advising him concerning the paying of that [197] money. That will be my position.

Mr. Whyte: If I may say something for just a moment.

The Court: I had gotten out of orientation to the line of testimony, and I asked counsel to direct my attention to the particular issue which he has done.

You want to direct it further?

Mr. Whyte: I wanted to correct a misstatement made by Mr. Enright, that this money was paid out after the court order became effective.

Mr. Hallberg was relieved of his duties of active management as Receiver at 5:00 o'clock p.m. on Sunday evening, February 28th.

This check, which has just been presented to him, was issued before that date, which conclusively answers any allegation that he paid it out in violation of the court order.

The Court: It brings up a question, doesn't it, as to whether you can pay a debt two days before it is due?

Mr. Enright: Yes.

(Testimony of Roy E. Hallberg.)

Mr. Whyte: That was due on the 1st of March. The facts are undisputed on that.

The Witness: I wonder if, your Honor, I may make a statement here?

The Court: No.

Q. (By Mr. Enright): Now, as to your desire, as pointed out by Mr. White, to have monies on this encumbrance there on [198] their due date, I call your attention to this check No. 204 dated December 31, 1953, and ask you to examine the time it cleared, as to—and then tell us when you mailed that check in?

A. Again I can't tell you exactly when this was mailed. I have no way of telling. The check was made out on that date and I have no way of telling how long the recipient of the check held it before depositing it.

Q. You do know, don't you, Mr. Hallberg, this check was dated back to December 31st and was paid about the middle of January?

A. There is no way I can tell at this time.

Mr. Enright: I will develop it by another witness.

Q. (By Mr. Enright): Now, directing your attention, Mr. Hallberg, to your Schedule D, being an itemization of the creditors, you have the item of "Frederick I. Richman, Management Fee for November 1953 in amount claimed" in the amount of \$3,104.33.

You were informed of that operating claim of Mr. Richman for his services in November 1953,

(Testimony of Roy E. Hallberg.)

shortly after you became Receiver, weren't you?

A. There never has been any bill sent to me, any communication as to the amount Mr. Richman claimed for services rendered. Had I received that bill I would have turned it over to the court for decision, as to payment to be made. [199]

Q. My question was, were you informed?

A. No.

Q. You did not have a conversation with Mr. Richman at the time you took over the records?

A. He told me what he had been getting, but he never asked me for any of this money. That I stated up here as more or less a contingent liability.

Q. Now, directing your attention to the top of Schedule C, where you state, "Disbursements Made by the Receiver as Directed by the Court", as I understand this, Mr. Hallberg, you and Mr. Whyte had a game of golf on a Sunday, March 7, 1954, and in the evening you called Judge Tolin, is that correct?

A. That is correct.

Q. Now, did you inform Judge Tolin of the nature of these operating expenses or bills that you have itemized here, that you have disbursed?

A. I believe I did.

Q. Now, Mr. Whyte was there during the phone conversation?

A. He was.

Q. Did Mr. Whyte at that time inform you or previously inform you that the defendant, Mr. Richman's position was that these bills should not be paid?

(Testimony of Roy E. Hallberg.)

A. I don't actually recall. However, I do know that [200] I paid—we accumulated all these bills and I wanted to find out whether they should be paid.

Q. I appreciate your wanting to pay them, but I am only concerned with this question: Did you or did you not at that time inform Judge Tolin that there was a dispute between Martin, Hahn & Camusi, representing the plaintiff, and Joseph Enright, representing the defendant, concerning the payment of these bills?

A. I don't recall the conversation, but this must have been—there must have been some question in my mind in calling for instructions.

Q. Did Mr. Whyte also talk to Judge Tolin at that time? A. He did.

Q. You were present during the conversation, in so far as you could hear what Mr. Whyte had to say?

A. I heard one-half of the conversation.

Q. Did you hear him advise Judge Tolin there was a dispute between the attorneys representing the respective parties concerning the payment of these bills?

A. I can't recall the conversation now.

Q. So far as you know, no attempt was made by yourself, as Receiver, or by your agent, your attorney, to communicate with myself, Mr. Enright, concerning this question on Sunday evening, March 7, 1954?

A. Will you state that question again, please?

(Testimony of Roy E. Hallberg.)

Mr. Whyte: Will you read it?

Mr. Enright: Read the question.

(The question was read.)

Q. (By Mr. Enright): Is that clear, Mr. Hallberg?

Mr. Whyte: As to what this man knows that his attorney did, he hasn't any way of knowing whether I communicated with you or not.

I'm going to object to the question in so far as it asks him for what action I took. I am the best witness as to that. That was done out of his presence.

Mr. Enright: I am not asking for what you did. I am asking for his knowledge as Receiver at this time.

The Witness: I can't recall.

Q. (By Mr. Enright): You did pay out \$6,121.40 as the result of this—after that telephone call, as shown on the schedules?

A. That is correct.

Q. Now, did Mr. Udall direct the managers of the apartment houses, which managers had been formerly employed by you, until 5:00 o'clock February 28, 1954, not to pay the weekend collections approximating \$2,000.00 to you?

A. He didn't tell me that, to me.

Q. No. Relate what you know on that subject matter, so we can expedite this, if we can.

A. As I understand it, on Sunday, he made the rounds [202] of all the apartments, and told them that the receivership had ended and he was in full charge.

(Testimony of Roy E. Hallberg.)

Q. And to pay the money to him?

A. And the inference was to pay it to him. We did not collect over the weekend and there was a good reason for it. In the first place, picked up all the ready cash——

Mr. Whyte: Mr. Hallberg, you have answered the question.

The Witness: Thank you.

Q. (By Mr. Enright): You were informed of this by Mrs. Hallberg, is that correct?

A. That is correct.

Q. When were you informed of that instruction given by Mr. Udall? A. Monday.

Q. Now to revert back to this phone conversation on March 7, 1954. I assume you felt you knew Judge Tolin sufficiently well over the years or period of time you could call him on the phone for instructions, is that it?

A. Well, I felt that inasmuch as I was working in conjunction with the court I had a right to phone for further instructions.

Q. You had known Judge Tolin since the time you had moved on Glen Summer Road?

A. Known him casually, yes.

Q. He lived in the same block as you did on Glen [203] Summer Road? A. That is right.

Q. Now, there is an item of compensation insurance, being a deposit of \$400.00, is that correct?

A. Yes.

(Testimony of Roy E. Hallberg.)

Q. I am quite sure that is the exact amount. Have you received any refund on that deposit?

A. I imagine the records will show whether a refund came in.

Q. It isn't shown in your accounting, I am sure, Mr. Hallberg.

Have you done anything since filing the accounting concerning that refund?

A. I think you will find it in there.

Q. Will you point it out then, if you think I will find it there.

A. I haven't the books here.

Q. The books of the receivership are here. Are you familiar with them? A. Yes.

Q. Point out——

Mr. Whyte: Why don't you show him the items?

Mr. Enright: I am not that much of a book-keeper.

The Court: Mr. Enright says it isn't there, as I understand. I understand you to say you can't find it.

Mr. Enright: Not in the accounting I can't find it. If I can trace some refund——

The Court: Let's have him do it during the recess and conserve the court time.

Mr. Enright: Yes, I think that is more expeditious.

Q. (By Mr. Enright): Now, again directing your attention to Schedule B, pages 3 and 4 thereof, you did pay out the salaries to Mr. Harrison, as reflected upon the schedule?

Can you find those items, Mr. Hallberg?

(Testimony of Roy E. Hallberg.)

A. I believe I have them here, yes.

Q. Will you tell us what the amounts are?

A. The one I have here——

Q. What column? A. Sir?

Mr. Enright: Will you read the question, Miss Reporter?

(The record was read.)

Q. (By Mr. Enright): If you do not understand the accounting, I would appreciate your stating so, the mechanics of it; I would appreciate your stating so.

And I would further appreciate it if counsel would not aid the witness in ascertaining the amounts.

A. If you will look on the large page under the column "Office" you see an amount of \$450.00, the first item.

Q. Yes. Any other item?

A. It will be included in your disbursements for [205] February, under operating \$600.00, in there.

Q. How about December?

A. You will find it under "Office"——

Q. What page?

A. Two pages prior to the large one. You will find an item there of \$500.84, I believe you will find covers——

Mr. Whyte: May the record show that the witness is now referring to the third page of Schedule B?

Q. (By Mr. Enright): Will we likewise find the amount you paid Miss Findeisen for her services? A. Yes, you will.

(Testimony of Roy E. Hallberg.)

Q. Now, Mr. Hallberg, when you were appointed Receiver and within the two or three days after your appointment, and I assume December 2nd as your date of appointment,—we had better go back to December 1st—that was the day, I think you went around to some of the apartment houses.

During the first three days, did you introduce anyone to the managers as being your agent?

A. Yes.

Q. What did you tell the managers?

A. I introduced Miss Cosgrove.

Q. What did you tell the managers?

A. I told them she was going to act for me.

Q. In the——

A. In the management, yes. And anything she wanted [206] would be under my instructions, and they were to follow it.

Q. You did not later inform the managers that Miss Cosgrove was your wife, did you?

A. I didn't see it was necessary, for the simple reason that she preferred acting as Miss Cosgrove.

Q. You did not inform Judge Tolin you intended to delegate your operation of these five apartment houses to your wife, did you?

A. I did not inform him that I was going to hire any assistance, or, in fact, we had no conversation about the assistance I was going to require.

Q. You did intend to do this very thing when you were appointed Receiver, didn't you?

A. If it required it.

Q. You did, in fact, perform your activities as

(Testimony of Roy E. Hallberg.)

the Receiver by receiving reports from Miss Cosgrove?

Mr. Whyte: Oh, objected to as going far beyond the evidence adduced here. The witness has testified as to what he did.

His own personal activities, as to a Receiver, went far beyond receiving reports from Miss Cosgrove or Mrs. Hallberg. It assumes facts completely contrary to the facts.

The Court: Overruled.

Q. (By Mr. Enright): You did, in fact, Mr. Hallberg, especially—or, commencing December 7, 1953, rely upon Miss [207] Cosgrove in performing activities involved in the management of these five apartment houses?

A. I didn't hear everything you said there.

Mr. Enright: Read the question.

(The question was read.)

The Witness: I relied on some of her activity, that is true.

Q. (By Mr. Enright): Actually, the physical method of operation was that commencing December 7th and all through February 28th, and you would make trips up to Los Angeles on the weekends or come up Friday night after completing your work for the County of Orange, isn't that right?

A. I came up during the week. I came up Friday, it is true. I was there Saturday. I was even there on Sunday.

Q. Friday evening, Saturday and Sunday?

(Testimony of Roy E. Hallberg.)

A. During the week I was there on various occasions.

Q. During the week you would receive reports after you got home from Miss Cosgrove, as to the occurrences during the day?

A. Sometimes I did.

Q. Now, Exhibit B, that is your little diary, is that right? It records the principal problems you had each day as they arose during your activities as Receiver in this matter?

A. I think I explained that book to you at the time [208] I presented it to you, that it is a composite of the various activities up to a certain point.

They do not include everything, every little conversation, every person we talked to, but as an overall picture of various things we considered important enough to write down.

Q. The important and principal problems you had are recorded here, are they not?

A. For the most part.

Q. Which ones are not then?

A. I can't tell you now.

Q. Did you consider the refrigeration problem at the Western Arms an important problem?

A. I did, and I was there.

Q. When were you there?

A. I was there.

Q. With reference to the breakdown of the refrigeration system?

A. I got in there one afternoon around 4:00 o'clock.

(Testimony of Roy E. Hallberg.)

Q. And was that the day of the breakdown?

A. No, it was two days following, and it was running perfectly.

Q. In fact, it was two days later, after the breakdown, that you got there, wasn't it?

A. After all, it was a question of having that machine in operation—— [209]

The Court: Mr. Hallberg, the question should be answered yes or no. Then if it is necessary to explain it, you may do so.

The Witness: Will you state the question again?

Mr. Enright: Read it, please, Miss Reporter.

(The question was read.)

The Witness: Yes.

Mr. Whyte: You wish to explain your answer, Mr. Hallberg?

The Witness: I do. We had the original contractor, the original refrigeration contractor up at the office. I talked with him and I was a little concerned about his knowledge of refrigeration. That happened to be the California Refrigeration Company.

I also talked with the Normandie Refrigeration Company, who had apparently much more experience. And the words were given to Mr.—given to the Normandie Refrigeration to finish up the job and save some upon it.

Q. Are you through with your explanation?

A. Yes.

The Court: Are you able to recall how much time you gave Orange County during the two days

(Testimony of Roy E. Hallberg.)

that elapsed, from the time the emergency arose and the time you arrived there?

The Witness: It is pretty hard at this time to state. I do know I went in there and as far as the actual work on the unit was concerned, the men were more capable than I was [210] of doing the required amount of repair; my being there wouldn't have helped any.

The Court: How long after the emergency first arose before you talked to any refrigeration men about it?

The Witness: I talked to them on the telephone the next day.

The Court: Did the emergency arise in the nighttime?

The Witness: It did.

The Court: What time of day did you hear about it?

The Witness: I heard about it late that afternoon. The managers had certain contractors they were at liberty to call for emergency work. And on refrigeration they were to call the California Refrigeration Company.

When they got on the job they worked during the day and had repeated phone calls with their office, which was overheard by the manager and proved to the manager the men didn't know what they were doing on the job. And when I got that information I certainly wanted to get somebody else on the job.

Mr. Enright: May I move to strike the witness'

(Testimony of Roy E. Hallberg.)

answer, that the men didn't know what they were doing?

The Court: No. He said it proved to the mind of the manager that the men didn't.

Mr. Enright: The manager, I see.

The Court: He is talking about the state of mind of the [211] manager as she communicated it to him, as I understand it.

Is that right?

The Witness: Yes.

The Court: Then you first came into the situation after the resident manager gave up, is that right?

The Witness: That is right.

The Court: How long after you got that word from the resident manager before you did anything?

The Witness: She had contacted another refrigeration company, knowing it was quite vital to get immediate service on the refrigeration. And I think actually her calling as soon as she did for another refrigeration company was quite in line with her duties, because of the fact that she had a company already on file that she could call for emergency. And the man who she did call at one time worked for the same company.

The Court: Well, the question, though, was how long after you were told that she was dissatisfied with her progress with the company or companies she called did you step into the picture?

The Witness: The following morning.

(Testimony of Roy E. Hallberg.)

The Court: Before noon?

The Witness: Yes.

The Court: Before 10:00 o'clock?

The Witness: At this moment I would say before noon. [212]

The Court: 12:00 o'clock. Mr. Enright, I don't want to shortchange you, but we had better take our recess. We can convene at 1:30, if you like.

Mr. Enright: Whatever is the convenience of the court.

The Court: 1:30.

(Whereupon, recess was taken at 12:00 o'clock noon, Friday, May 14, 1954, to 1:30 o'clock p.m. of the same day.) [213]

ROY E. HALLBERG

called as a witness on his own behalf, having been previously duly sworn, resumed the stand, and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Enright): Mr. Hallberg, before the recess we were discussing the subject matter of the refrigeration failure at the Western Arms.

Mr. Enright: May I inquire if the court has completed his questions?

The Court: Yes.

Q. (By Mr. Enright): Now, the first you heard about the refrigeration problem at the Western Arms is shown in your memoranda that you kept

(Testimony of Roy E. Hallberg.)

or made up in the evenings at your home, is that right? A. May I have my——

Mr. Whyte: May the witness refresh his recollection?

Mr. Enright: If I may step up next to the witness, I will use my copy.

The Court: Surely.

Q. (By Mr. Enright): Now, directing your attention to your notations made for Friday, February 19, 1954, you made the entry, "to W. A. re: refrigeration. John Dougherty", is [214] that correct? You made that entry on that date?

A. I made that entry, yes.

Q. Now, the only other entry you made in your diary concerning this refrigeration problem was one made on February 22nd, where you entered, "Switched to Normandie Refrigeration at W. A.", meaning Western Arms?

A. That is correct, yes.

Q. Those are the only two entries you made?

A. That is correct.

Q. In your diary?

A. That is correct.

Mr. Whyte: Did you check that, Mr. Hallberg?

The Witness: Yes.

Mr. Whyte: All those intervening days?

Mr. Enright: I will represent to the court I have checked them and I found no other entries on the diary. It is the best evidence. If you want to take the time and cross examine on redirect, go ahead.

(Testimony of Roy E. Hallberg.)

The Witness: As far as I recall, those are the only entries.

Q. (By Mr. Enright): February 22nd was a holiday, was it not, so far as the County of Orange was concerned? A. Yes.

Q. Now, where were you during the period from February 16th to Friday, the 19th, if you know?

A. It is pretty hard to tell you now.

Q. Were you available at your home phone number at Corona del Mar? A. Oh, yes.

Q. You were available there?

A. Not during the day, probably, but at night I was, definitely.

Q. Did your agent, Mrs. Hallberg, report to you on the 16th, 17th or 18th that the refrigeration had had a failure in the Western Arms Apartments?

A. At this time, no, because the refrigeration service company would have automatically been called.

Q. Then the refrigeration of these 406 apartments in five apartment houses is a matter of automatic attention on the part of the managers, is that it, so far as you as Receiver were concerned?

A. I don't believe you mean exactly as you stated it there.

Q. You did not attend to this refrigeration problem in the Western Arms Apartments during the period February 16th to February 19th?

A. I personally did not do the work.

Q. No. You were not available by phone and had

(Testimony of Roy E. Hallberg.)

no knowledge of any problem on the refrigeration during that period of time, February 16th to the 19th, in the evening, [216] Friday evening, February 19th? A. I was available.

Q. My question was, was your knowledge as Receiver. You didn't even know there was such a problem, did you, during that period?

A. I do not believe it had been reported. However, I cannot recall exactly because there is no mention in my diary here.

Q. And now, you stated before recess that you did come to Los Angeles during the period December 7th to February 28th on workdays, Monday through Friday?

A. I was through at times.

Q. The only times you did come to Los Angeles during the work hours of the day, 8:00 in the morning to 5:00 in the evening, was on the one day that your petition for authority to renovate apartments was heard in this court in an afternoon in December, isn't that correct?

A. That is not correct.

Q. The only other time you came to Los Angeles was the time you appeared over at the City Prosecutor's Office of the City of Los Angeles at about 4:00 o'clock in the afternoon on the smog control complaint? A. No.

Q. What other times did you come to Los Angeles? A. I stated previously. [217]

Q. During a work week. I know about your weekends.

(Testimony of Roy E. Hallberg.)

A. I stated previously that there were times I came in during the week.

Q. On Friday afternoon late?

A. During the week; not on Friday.

Q. Show me in your notes here any entry that you have made as to a trip you made to town here during the day——

A. I have no entries there at all showing I made any trips or that I didn't make any trips.

Q. In all the entries in these notes here usually the words "made the rounds" merely means that Mrs. Hallberg went to the apartments and picked up the monies, isn't that right?

A. Not necessarily.

The Court: Would it ever mean that?

The Witness: Occasionally it would.

The Court: What else would it mean?

The Witness: It would mean that I probably went in and made a fast turn of the apartments.

Q. (By Mr. Enright): Did you see the managers when you did that?

A. Occasionally I did; quite often I didn't.

Q. Wouldn't you want to know from your managers what the problems were and how they were getting along with these 60 and 80 and 50-unit apartments? [218]

A. If there were any problems I am quite sure the managers would have been in touch with the office.

Q. Really, Mr. Hallberg, what you did do is that you delegated to your wife the operation of these

(Testimony of Roy E. Hallberg.)

five apartment houses during the work week, isn't that correct? A. No.

Q. I direct your attention to your deposition, page 89, line 25, to page 90, line 19. When you have completed reading it, please advise me.

A. I think the——

Mr. Whyte: There is no question before the house, Mr. Hallberg.

Q. (By Mr. Enright): Did you on April 22, 1954, testify as follows concerning this subject matter:

“Q. Well, generally, didn't you do your checking on the operation of these apartments on the weekends, Mr. Hallberg?

“A. I did this, done that.”

A. That isn't what I said.

Q. (Continuing reading:)

“Q. I mean, that was the rule, wasn't it?

“A. Not necessarily.

“Q. You'd come in on weekends, Saturdays and Sundays?

“A. Not necessarily. I came in during the [219] week some evenings.”

Mr. Whyte: Mr. Enright, may I interrupt to ask whether you are reading from the original corrected deposition?

Mr. Enright: I am reading from the deposition as handed to me by the reporter.

Mr. Whyte: If you will be kind enough to read from the original, which has been corrected, I think you will get a more accurate picture.

(Testimony of Roy E. Hallberg.)

Mr. Enright: I will read the portion as given at the deposition and then read it as he corrected it, so the record will be complete.

“Q. You’d come in on weekends, Saturdays and Sundays?

“A. Not necessarily. I came in during the week some evenings.

“Q. Some evenings during the week?

“A. Yes.

“Q. But not during the daytime very frequently?

“A. I have—was in during the day at times.

“Q. Approximately how many times during the day? “A. I don’t recall now.

“Q. Now, you were busy during the day working for the County of Orange, weren’t you; that is, the week days, Monday through Saturday, or Friday night?

“A. Friday nights I made it a point to get in [220] there and stayed around all day Saturday, and I was there on occasion on Sunday.”

Mr. Whyte: May the record show what Mr. Enright has read is the deposition copy received by him from the reporter and not corrected by the witness on the original?

Mr. Enright: I will complete it, sir.

Q. (By Mr. Enright): Now, Mr. Hallberg, do you desire to correct your deposition from the manner in which the court reporter reported your deposition, in the manner in which you have corrected it here in the original? A. Yes.

(Testimony of Roy E. Hallberg.)

Q. All right. Then you did correct page 90, lines 5 to 7, to read as follows:

“Q. You’d come in on weekends, Saturdays and Sundays?

“A. Not necessarily. I came in during the week some evenings,”

and you wish to add on to that “as well as days”, is that correct? A. That is correct.

Q. Now, what other days, other than the day that you appeared over at the City Prosecutor’s office on the smog control complaint and the day you appeared before his Honor of this court on your petition for authority to renovate those apartments, what other days did you come in? [221]

A. I believe I stated at the time that I couldn’t tell you the exact days, but there were many days that I came in.

Q. Now, you referred in your direct testimony to negotiating some insurance. Didn’t Mrs. Hallberg attend to most of those negotiations?

A. I was in the office on two occasions. He met me at my office on one occasion. Mrs. Hallberg also contacted Mr. Dulley, the broker.

Q. You met Mr. Dulley twice, and he was in your office once? A. Yes.

Mr. Harrison worked from Monday through Friday as an employee of yours, didn’t he?

A. That is correct.

Q. You would leave your instructions to him in writing on many occasions?

A. If he wasn’t around, yes.

(Testimony of Roy E. Hallberg.)

Q. Is it your testimony you set up a new system of keeping the records of the administration of these properties? A. I did.

Q. And you gave your directions to Mr. Harrison in writing, did you?

A. I gave some instructions to him, yes, not all.

Mr. Enright: May I have these four sheets of paper marked for identification next in order?

The Clerk: Defendants' C for identification.

(The documents referred to were marked Defendants' Exhibit C for identification.)

Q. (By Mr. Enright): Mr. Hallberg, I present to you Exhibit C for identification and then ask you to examine all three of these sheets of paper and state whether or not they are in your handwriting?

Mr. Whyte: Can you answer that question, Mr. Hallberg?

The Witness: What was the question?

(The question was read.)

The Witness: They are in my handwriting, with the exception——

Q. (By Mr. Enright): Yes, go ahead and state it.

A. This, I don't know (indicating); that is shorthand. I don't know what that is.

Q. The shorthand writing appearing on one of these sheets is not your shorthand writing, is that right, Mr. Hallberg? A. That is correct.

Mr. Whyte: May the record show that that is sheet 3 of Exhibit C for identification.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Now, the sheet 3 for identification constitutes your instructions to Mr. Harrison to prepare the new set of books?

A. No, those were not instructions to prepare a set [223] of books. Those were instructions as to what I wanted to get and we were going to sit down and work it out, because a bookkeeper who has been accustomed to one method sometimes finds it a little difficult to jump to a completely different set of books.

Q. Do you base your answer on how bookkeepers operate on your training at Northwestern, back in the '20's, and your approximate one year working with the books pertaining to a bondholder's taking possession of property in Chicago in 1931?

A. As a matter of fact, information you gather on methods is not lost.

Q. You didn't lose your knowledge attained back in the '20's at Northwestern?

A. No, sir. I still think——

Q. I appreciate you do.

The Court: Have you ever done anything with bookkeeping since then?

The Witness: I have done it quite often for myself or Morgan Construction Tooth Company, and even I was an auditor appraising—when I was an auditor appraising, I worked with the books.

Q. (By Mr. Enright): Morgan Construction Tooth, that was during that period of June of '51 to Christmas of 1951?

A. Approximately so, yes.

(Testimony of Roy E. Hallberg.)

Q. At that time you went into and examined the Morgan [224] Construction Tooth Company's books, did you not, in May and June of 1951?

A. No.

Q. You did not?

A. No, because there were no books.

Q. There were no books? A. No.

Q. Do I understand you correctly to state that Morgan Construction Tooth Company, a corporation, had no books during the months of May and June of 1951?

A. You recall I testified that a public accountant was brought in there to bring those records up to date.

Q. Well, what records was he bringing up to date? Were there books he was bringing up to date?

A. The books and the records, yes.

Q. And you with the public accountant brought them up to date, did you?

A. I wasn't concerned with the past.

Q. You were not?

A. Not at that point. I was keeping the records up to date and making the entries, the current entries.

Q. After you went with Morgan Construction Tooth in June, is that right, May or June,—

A. June, yes.

Q. —and you directed Mrs. Hostetter to keep the [225] books up to date—

A. No, I did that myself.

Q. You personally did it? A. Yes.

(Testimony of Roy E. Hallberg.)

Q. You did that each month during June through December of 1951? A. Yes.

Q. So you did have six months there of posting of books involving the sale of a tooth to be set up on the end of a boom shovel or earth moving equipment, is that it?

A. It was not quite technically correct, but—

Q. Very close, though, isn't it? Isn't that right?

A. It is close enough.

Q. So these are the type of instructions you gave or prepared over the weekends when you were in Los Angeles and left for Mr. Harrison your—

A. It doesn't necessarily mean it was prepared over the weekend; they are not dated.

Q. I know that. But they are the type of instructions you left for Mr. Harrison?

A. That was for, information, as I explained before, so that we could get books together and that he would be able to work with.

Q. You did not prepare a report as to a Receiver within the 30 days after your appointment, as provided by the [226] rules of this court?

Mr. Whyte: Objected to as calling for a legal conclusion from a lay witness.

Q. (By Mr. Enright): Did you prepare a report within the 30 days commencing December 2, 1953?

Mr. Whyte: Objected to as immaterial. Same objection as before, it calls for a conclusion—

The Court: Sustained.

Mr. Whyte: I didn't catch that.

(Testimony of Roy E. Hallberg.)

The Court: Sustained.

Mr. Enright: I wish to prove through this witness, and make offer of proof that he failed to fulfill his duties as Receiver in preparing a report as required by the rules of this court, which are that the Receiver submit his report within 30 days after his appointment.

The Court: All right. That is what you want to do. Just ask him that.

We take notice of what is in our records and what is not there.

Mr. Enright: All right.

Q. (By Mr. Enright): Then I will ask you: Did you prepare a report within the 30 days after you were appointed Receiver?

A. We started to prepare a report and it wasn't necessary. [227]

Mr. Enright: Now, I move to strike "it wasn't necessary."

The Court: That part of the answer will go out.

Q. (By Mr. Enright): You started to prepare a report, didn't you, Mr. Hallberg, and you found your records were not complete, isn't that true?

A. No.

Q. You had Mr. Whyte come out and instructed Mr. Harrison to get the report prepared, also?

A. We had to find out what information was necessary.

Q. And the court rule was read to you and Mr. Harrison, wasn't it?

A. As far as I know, it was.

(Testimony of Roy E. Hallberg.)

Q. Yes. And approximately a week or so later then an order was made by this court extending the time within which to make the report, isn't that right? A. That is correct.

Q. Did you represent to Judge Tolin, before your appointment on December 2, 1953, that you had for some years been associated with property management operation in Chicago? I call your attention to the word "years".

A. I believe I mentioned the fact that I had had experience that extended over a period of time in Chicago.

Q. You did make the representation then to Judge Tolin that you had for years had this experience, as I just stated [228] it, before you were appointed?

I would appreciate a yes or no answer, and then you may explain it in any manner you want to.

Mr. Whyte: I am going to request the transcript be shown to the witness. The transcript is the best evidence of what he said to Judge Tolin. I request he be shown the transcript.

The Court: Mr. Whyte, he is inquiring as to what he told me before there ever was a transcript. At least, I am assuming he is. If I hadn't had some knowledge of your client he never would have gotten in here to make a transcript, so the objection is overruled.

Mr. Enright: May we have the question read?

(The question was read.)

Mr. Whyte: I am going to request, also, that he

(Testimony of Roy E. Hallberg.)

be given the approximate time, place, persons present, with respect to this conversation.

If he wants to lay a foundation, let him do it properly here, so that the witness is acquainted with the conversation he has in mind.

The Court: Of course, we are not seeking to employ a man now. We are undertaking to fix compensation after he has completed his services. I don't think that is worth laboring too much, what the circumstances were in his getting the employment. [229]

Mr. Whyte: Then I will add the objection of immateriality, your Honor.

The Court: No, it is material and it is proper. It should be considered here.

But we have taken a tremendous lot of time with it. I don't think it is worth a whole lot of time.

The Witness: The question, you are asking me a question that is awfully hard to recall. The fact that I handled properties extending over one, possible two different years, and the term "years" is rather a vague term——

Q. (By Mr. Enright): Would you please answer the question, after you are through with your explanation, whether it is yes or no, your answer?

A. Well, the question, you can't answer it yes or no.

The Court: I gather from the colloquy that has gone on that he can't answer it at all. That is, he says, "I just don't know whether I have said it was three years or not."

(Testimony of Roy E. Hallberg.)

Mr. Enright: My inquiry is what representations were made to this court before his appointment. The doctrine of unclean hands, that has application to every proceeding in equity. I would desire to lay this foundation, that this man's hands are not clean.

I will proceed to another question.

Q. (By Mr. Enright): Did you represent to Judge Tolin, before your appointment as a Receiver, that you had been [230] engaged in managing property for elderly relatives in this area?

A. I don't know that I made any such statement.

Q. Would you say that you did not make such a representation to Judge Tolin?

A. I wasn't managing properties for a relative here.

Q. I appreciate that, sir. But I want to know what you represented to this court, and I would like to have your answer.

A. I think the answer has already been given you in the deposition.

Q. What did you tell Judge Tolin concerning managing property for elderly relatives?

A. I don't know that I told him anything about elderly relatives.

Mr. Enright: You see, your Honor, I am in this predicament: This is what I anticipated would occur when I filed a petition concerning your Honor's qualifications.

The Court: I didn't treat that as a petition. It was kind of a memorandum. It wasn't a moving paper.

(Testimony of Roy E. Hallberg.)

I don't know if you know how Receivers are appointed in this court generally, Mr. Enright.

We had a case the other day and one of the other judges said, when he happened to be at a place where some of the judges were together, he said, "Do any of you fellows know [231] anyone that would be good at running a certain kind of business?" And he named it.

He said, "I thought of asking so-and-so," and he named a well-known attorney. He said, "I knew he operated a business of that kind. I telephoned him and he isn't available."

So we get suggestions from things that we have learned, as a matter of common community knowledge about people, and then we follow them up; we make further inquiry.

That further inquiry was made here on the record. My impression at the time that I asked Mr. Hallberg to come in was that he had been operating an apartment house in Pasadena or South Pasadena for an elderly relative.

It turns out, on the hearing now, he owned the apartment house and the elderly relative was probably working for him.

Mr. Enright: I appreciate that, but——

The Court: I don't see it makes much difference. The thing is that he had had acquaintance to that extent with that apartment house.

Mr. Enright: Without reply at this time, your Honor, to the proposition that is before you, I am here endeavoring at this moment to develop the

(Testimony of Roy E. Hallberg.)

record that this witness, this Receiver, did make misrepresentations to the court, and the court relied upon them and made the appointment. That is the predicament I am in.

I will apparently have to call the court as a witness as [232] to what he did or didn't say to you.

The Court: You can't call the court on that subject. We are not going into it any further. It is closed.

Mr. Enright: I will desire to complete this point here:

Q. (By Mr. Enright): Did you represent to Judge Tolin that you had managed apartments for elderly relatives who have considerable apartment property in southern California?

Mr. Whyte: Objected to as immaterial; already asked and answered.

The Court: Sustained on the ground it has been asked and answered.

Mr. Enright: I will point out the amount of properties involved in this last question, that it was not involved in the previous question.

Q. (By Mr. Enright): Did you represent to the court before your appointment, that your main vocation for some years, was the management of real property?

A. I believe I mentioned to the court that I had handled and managed properties.

Mr. Enright: I desire to inquire, your Honor, if the court's last statement concerning this subject matter was to the effect that this subject matter

(Testimony of Roy E. Hallberg.)

is closed, and I take it that is a direction to me not to pursue this subject matter.

The Court: It is a direction to you to not go further into what led me to call Mr. Hallberg in here and present [233] himself for questioning at the time that he was appointed.

These Receivers do not in this court,—they might in the bankruptcy side, but in this court generally equity receivers are not people that come around making representations and asking for these appointments. They are people whom the judges seek out, and it is looked upon with not a very kindly eye, when we seek out people whom we consider qualified, to come in here and try the judge and that receiver on the basis of bad faith in the representations.

Mr. Enright: I appreciate your Honor's statement, but I desire to develop that after this man was sought out by your Honor he then made the representations which are not true and the representations resulted——

The Court: You may question him all you want about the representations he made on the record when we called him in here for further examination by counsel and inquiry by the court.

I say, all you want to. I hope you will not take all afternoon at it.

Mr. Enright: I don't think I have overly wasted time in the proceeding before your Honor.

The Court: I think, Mr. Enright, you never feel

(Testimony of Roy E. Hallberg.)

you are wasting time. You are one of the most diligent men whom I know.

Mr. Enright: Thank you, your Honor. [234]

Q. (By Mr. Enright): Did you represent to Judge Tolin and the parties assembled in the chambers of Judge Tolin on November 30, 1953, your main vocation for some years was in the management of real property?

Mr. Whyte: Before you answer, Mr. Hallberg, the counsel is questioning you with reference to a written document, and I am going to request that the writing be placed before you.

The Court: If you are questioning him with respect to things set on the record, he should be shown the record.

Q. (By Mr. Enright): I direct your attention to the transcript of November 30, 1953, page 10, lines 5 and 6, reading as follows:

“* * * that your main vocation for some years was in the management of real properties, * * *”

A. That is correct. During the years that I had those properties.

Q. And the years you are referring to now is the year 1931 in Chicago?

A. And '32. It will extend over into '32.

Q. Your acquiring a residence on Glen Summer Road in 1947 and living there until 1952, that is your residence, two residences on that street?

A. I had two residences, yes.

Q. You lived there during that period?

A. Yes. [235]

(Testimony of Roy E. Hallberg.)

Q. And one apartment house here on Fair Oaks?

A. One on Fair Oaks, and——

Q. The four-family flat on El Molino?

A. That is a four-apartment building on El Molino, yes.

Q. And two residences down in Orange County?

A. One a residence and one a triplex.

Q. And that was your main vocation for some years, as of November 30, 1953, is that right?

A. It is so stated.

Q. And did you represent at that time, as stated in lines 7, 8 and a portion of 9, on page 10, as follows:

“* * * that your experience in it locally has been in the management of your own real properties, which were of income nature, and of similar properties owned by either you or your wife’s relatives”?

A. This part up here was what I was answering (indicating).

Q. Your whole answer, statement to the court, was as follows:—so we will make it clear, I will read all the representation, commencing at line 3—

“Now, they haven’t announced any objection, but they don’t know you. I have explained to them——”

Mr. Whyte: May the record show this is the court’s statements which are being read into the record?

The Court: Yes. [236]

Mr. Whyte: The impression has been created

(Testimony of Roy E. Hallberg.)

these are Mr. Hallberg's statements. These are the court's statements. Go ahead, Mr. Enright.

Mr. Enright: Thank you. Starting over, Miss Reporter, at line 3:

"Now, they haven't announced any objection, but they don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some years was in the management of real properties, sometimes in connection with court receiverships, and that your experience in it locally has been in the management of your own real properties, which were of income nature, and of similar properties owned by either you or your wife's relatives."

Q. (By Mr. Enright): Mr. Hallberg, is that correct?

A. Ostensibly this is correct, with the exception of that last statement there. That was just a general statement. But the main fact was I had managed properties.

The Court: What he wants to know, Mr. Hallberg, is did the reporter get down correctly what went on?

The Witness: I don't believe the reporter did. However, at that time there was quite a general discussion and several people there, and the exact wording of that particular statement escapes me.

Q. (By Mr. Enright): Now, before you came into chambers on November 30, 1953, on page 4, line 16, the following representations were made as

(Testimony of Roy E. Hallberg.)

to what you had represented to this court, and I read:—

Mr. Whyte: Again may the record show this is the court's statement that is being read into the record.

Mr. Enright (Reading):

"Mr. Hallberg was for some years associated with a property management operation in Chicago, and has considerable acquaintance and experience in that type of work. Since coming to California he has held various positions with different types of corporations, and has been engaged in the management of property for elderly relatives who have considerable apartment property in southern California.

"I called him and found that he is available, and I asked him to come in here at about 2:00 o'clock today, so that counsel could meet him. It was my intention——"

That is concerning another subject matter.

Q. (By Mr. Enright): That statement was likewise true? A. Yes.

Mr. Enright: That is all. [238]

Redirect Examination

Q. (By Mr. Whyte): By the way, Mr. Hallberg, you replied to the question that statement was also true, and you said yes. By that you mean the reporter reported Judge Tolin's statement correctly?

A. As far as I know.

Mr. Enright: Well, pardon, your Honor. May I

(Testimony of Roy E. Hallberg.)

ask—I may find myself in a mental reservation or something—if he is just saying the reporter reported it correctly. I want to find out whether or not the statement is true, in addition to whether a reporter reported it correctly. I don't know just what this means here myself, but I want to leave no uncertainty in the record.

The statements were correct?

The Witness: Yes.

Mr. Enright: And they were the truth?

The Witness: As far as I can tell you now.

Q. (By Mr. Whyte): In the course of your duties as the Receiver of real and personal properties constituting the former Richman Trust, did you sign the checks which were issued by you as Receiver? A. I did.

Q. Will you tell us what you did in connection with the execution and issuance of each one of those checks? [239]

A. Those checks had been made out together with the supporting evidence in the way of bills and were checked against the amounts and I signed them.

Q. At the time you signed the check did you compare the amount on the check with the amount set forth in the bill? A. I did.

Q. Did you make any other check to determine or did you perform any other task in that connection to see whether the check correctly reflected the amount of the statement?

A. We usually had the—well, we did have the

(Testimony of Roy E. Hallberg.)

invoice checked before it was even presented, to see that the work had been finished.

Q. By whom was the invoice checked?

A. By Mrs. Hallberg and myself.

Q. You testified that you discussed matters during the evening with Mrs. Hallberg on frequent occasions. What sort of matters did you discuss with her at the end of the day?

A. Such problems as we both encountered during the day; work around the buildings. She encountered them and I encountered them. A lot of the decisions were made at night, based on the information I had.

Q. During those evening conferences, did you ever give her instructions with reference to the conduct of the succeeding day's work? [240]

A. I certainly did.

Q. You have testified concerning your ownership of a 16-unit apartment building on South Fair Oaks Avenue in South Pasadena. Please tell the court what, if anything, you did with regard to the actual operation of that building.

Mr. Enright: Objected to as there was no cross examination on what he actually did to establish the number of apartments; improper redirect examination.

The Court: Overruled.

The Witness: We had a lot of changes to make in the apartment. We wanted to upgrade it to quite an extent. We completely——

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Whyte): By "we" whom do you mean?

A. Mrs. Hallberg and I completely redid color schemes throughout the building. The building was painted both inside and out. A lot of work I did myself.

We had contractors called in to do some of it. A roof was repaired. The garage doors were changed. The carpeting was completely pulled out and replaced by new carpeting to harmonize with the walls of the corridors, and new refrigeration units were put in. We took some double apartments there and made singles out of them.

Q. Did you do any of the painting work yourself, Mr. Hallberg? A. I did, yes. [241]

Q. Did you do any of the carpeting work yourself? A. I did some of that, yes.

Q. What other manual labor in the building did you do yourself?

A. Oh, I laid some tile, that is, floor tile.

Mr. Whyte: I think that will be sufficient.

The Court: I hope that someone is going to establish here whether there was a decline in income or an increase in income for the same properties during the period of the receivership and the immediately preceding period.

Mr. Enright: In that connection, your Honor, there are two aspects. We haven't seen the report, except in the three months. But I am quite sure that the witness, if he is experienced, will admit your winter months are different from summer

(Testimony of Roy E. Hallberg.)

months, at least in California, in Los Angeles. You can't compare those three months.

If he wants to compare those three months that he was in possession with three months, comparable three months of other years, that could be done. I believe it would carry some weight or have some effect that way.

The Court: That might be the proper comparison to make. But it would be of interest. Suppose it were a sharp decline? Everything goes along on 80 per cent occupancy level, and you put in a receiver and it cuts down to half that, that would be a drastic cut. [242]

While I am not going to give him credit for seasonal increase, if it turns out there was a seasonal increase, I would like to know how it turned out after he went in.

Mr. Enright: Yes. If that evidence goes in I don't know what it will be. I will say I would want an opportunity to bring in the comparable months of previous years.

The Court: It wouldn't be worth anything unless we had it.

Mr. Enright: My opinion, I am sure, is not controlling in this matter, but I think it should be to a comparable period.

Q. (By Mr. Whyte): Calling your attention to the period 1931 and 1932, in which you managed real properties in Chicago, how many buildings did you have under your control and direction at that time?

(Testimony of Roy E. Hallberg.)

A. Some forty or fifty buildings. I don't recall the exact number now.

Q. What services did you perform with reference to those buildings?

Mr. Enright: I object. No cross examination on that subject.

The Court: Sustained.

Q. (By Mr. Whyte): What was the largest building in the group that you managed in Chicago?

Mr. Enright: Objection, on the same ground, your Honor. [243]

The Court: Sustained.

Q. (By Mr. Whyte): During the course of your cross examination your attention was called to your report and petition for fees, and specifically to page 3, lines 17 to 22, in which you reported to this court:

"Petitioner's operations with reference to the assets and properties of the former Richman Trust, and the services which have been necessarily rendered and performed by him or his agents in carrying on the normal business and affairs of said former trust and matters incidental thereto, from and after December 1, 1953, to and including February 28, 1954, may be summarized as follows:"

You were asked who were included within the term "agents". And I believe you replied Mr. Harrison and Mrs. Hallberg. Is there anyone else who was included within the term "agents"?

A. The only one I could think of would be Miss

(Testimony of Roy E. Hallberg.)

Findeisen, who succeeded Mr. Harrison, and, of course, naturally, as agents I think that would include the managers of the various apartments.

Q. These petty cash funds that were kept at each individual apartment, please tell the court what function they performed. [244]

Mr. Enright: Objected to on the ground it is immaterial as to the function. The only question is were they under his control. The court order was to retain control.

The Court: I kind of would like to know what kind of funds they were. Let's just get the picture on it.

Mr. Enright: All right, your Honor.

The Witness: These funds were in the hands of the managers who were managing each one of these buildings. The funds were used to pay incidental bills as they accumulated, or out-of-pocket money, so that small items which they picked up at the stores and used in the building could be paid for.

It was also used for cashing checks. Some of the tenants in the buildings would bring in their checks and the managers would cash them from that petty cash fund.

Q. (By Mr. Whyte): You mentioned before that you considered those as part of the operating assets of the individual apartment houses.

A. I do.

Mr. Enright: To which objection is made.

Mr. Whyte: I hadn't finished my question.

(Testimony of Roy E. Hallberg.)

Mr. Enright: He started to answer at the same time.

Q. (By Mr. Whyte): You stated before that you considered those petty cash funds as being a part of the operating assets of the individual apartment houses. [245]

Did you so consider them for the reasons which you have stated, namely, they performed the functions you have mentioned?

Mr. Enright: To which objection is made as being incompetent, irrelevant and immaterial as to what he considered. The question is was the money under his control.

The Court: Sustained.

Mr. Whyte: I have no further redirect examination, your Honor.

The Court: Next witness.

(Witness excused.)

Mr. Whyte: Mrs. Hallberg, would you take the stand?

Mr. Enright: Your Honor, I have two witnesses under subpoena that will be short. I would like to be accommodated.

The Court: If you wish to take that out of order, we will take the two short witnesses.

Mr. Enright: Mrs. Kennedy.

MAUDE KENNEDY

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

(Testimony of Maude Kennedy.)

The Clerk: Please be seated. Your full name, please?

The Witness: Maude Kennedy. [246]

Direct Examination

Q. (By Mr. Enright): Were you an employee of Roy E. Hallberg, Receiver, during the period about November 30th to and including February 28, 1954? A. I was.

Q. As an employee were you the manager of the Western Arms Apartments?

A. That is right.

Q. Would you state how many times you saw—first, how many hours a day were your services being rendered as manager of that apartment house? A. How many hours a day?

Q. Yes. Are you there 24 hours a day?

A. That is right.

Q. You have an assistant, is that it?

A. If I am not there the assistant was there.

Q. In the ordinary course of business all occurrences at the apartment of a business nature, so far as the owners are concerned, is reported to you?

A. That is right.

Q. Now, on how many different occasions during the period December 1, 1953, through February 28, a Sunday, 1954, did you see Mr. Hallberg?

A. Well, I saw Mr. Hallberg, it was either the morning [247] or the morning after he took over, and Mr. Richman brought him in and introduced him to me.

(Testimony of Maude Kennedy.)

Mr. Hallberg picked up the rents and Mr. Richman asked me to cooperate with Mr. Hallberg, and they left.

Then I don't know what day that was on, but I think it was on a Saturday evening or a Sunday evening following, I happened to go out and I met Mr. Hallberg and Miss Cosgrove in the lobby.

Mr. Hallberg introduced me to her and said that she was going to take over the interior decorating and I would deal with her.

I never saw Mr. Hallberg again until the 6th day of February, on a Saturday morning, and he came in and spent about an hour, and that is the only times I ever saw Mr. Hallberg.

Q. Now, directing your attention to a refrigeration problem that occurred or arose at the Western Arms Apartment in February, I believe, of 1954. Did a problem arise concerning the refrigeration?

A. Yes. One of the apartments reported that the box was off. I called the company——

Q. I am concerned about the date, first, if you will pardon me.

A. It was either—it was on the 16th, and they came and turned the box off. I am sure that was the 16th. [248]

Q. Now, just a moment, Mrs. Kennedy, if you please. A. O.K.

Q. It is your best recollection that it was February 16, 1954?

A. As near as I know now.

(Testimony of Maude Kennedy.)

Q. Now, my inquiry is this: Did you attempt to get in touch with Mr. Hallberg?

A. I did.

Q. And for what period of time did you try to get in touch with Mr. Hallberg and/or Miss Cosgrove?

A. I started trying to get in touch with Mr. Hallberg on the afternoon of the 17th, 18th and 19th, and never was able to contact Mr. Hallberg.

About 5:00 or 5:30 on the evening of the 19th Miss Cosgrove called me and asked me if I had been trying to contact Mr. Hallberg, was something wrong with the refrigeration.

I said, yes, I was, but I said, "It is all taken care of. I had to go ahead and decide for myself."

Q. How did you try to contact Mr. Hallberg?

A. I tried to contact him through the office, and I called two different times out at his house, and I never was able to get him.

Q. By the "office" you mean the office set up over at the Oliver Cromwell?

A. Yes. [249]

Q. Oliver Cromwell Apartments.

A. That is right.

Q. Now, did you call Mr. Richman?

A. I certainly did on the morning of the 18th.

Q. Concerning this subject matter of the refrigeration?

A. Yes. By that time the whole units were off. There were about 21 people without refrigeration.

Q. What did he instruct you to do, if anything, or say?

(Testimony of Maude Kennedy.)

A. He said I should go ahead and see that it was done. I let the other people go and got Mr. Daugherty, John Daugherty of the Normandie Refrigeration.

Q. You let the other refrigeration company go and hired John Daugherty yourself?

A. That is right. And Mr. Hallberg called me; as near as I know it was on the morning of the 20th when he came in, and I explained to him what I did, and he said I did—that everything I did was perfectly all right.

Q. Now, when you used the words “came in”, was there a phone conversation or did he personally come over?

A. No, he did not come in the apartment. He called me on the phone.

Q. On the morning of the 20th?

A. Yes. I don't know where he was. I just judged he [250] was at the office.

Q. Directing to your attention to Miss Cosgrove's activities, did she attend to some painting at the Western Arms? A. Yes, sir.

Q. Would you explain in what manner or how she attended to it?

A. Well, she just hired painters to come in and paint; most of it wasn't successful.

Mr. Whyte: I am going to ask the last remark of the witness be stricken as not responsive.

The Court: Denied. I would like to have an explanation, in the course of the testimony, wherein it was not successful.

(Testimony of Maude Kennedy.)

It seems if you are going to paint something you ordinarily succeed in taking the paint off. So if that means something to her, something more to her than it does to me, you can have her develop it.

Q. (By Mr. Enright): Mrs. Kennedy, how long have you been a manager of apartment houses?

A. Since 1924.

Q. In this community here?

A. That is right.

Q. Apartment houses similar to the Western Arms? A. A lot of it, yes.

Q. That course of years, have you as manager participated in the directing of the painting of apartments? [251] A. That is right.

Q. Will you explain what you mean by successful or unsuccessful painting by Miss Cosgrove over there in these apartments?

A. Miss Cosgrove insisted on them using a paint none of the painters wanted to use. I called it water paint. I don't know what the name of it was.

And she had a lot of trouble with the painters, because the painters refused to use it. She wanted them to put it on with a roller and they refused to do it.

So the painters would quit and they would have to go ahead and put this on, and it didn't cover, and then when you washed it, it washed off.

So that is what I meant about the paint.

Q. Yes. I will ask you specifically, can you remember were Apartments 304, 308, 119—

A. No, 304 and 119.

(Testimony of Maude Kennedy.)

Q. Now, did she bring out some paper drapes for you?

A. Yes, but I didn't use them. They were plastic something. I don't know, plastic tablecloths. I didn't use them.

Q. Did she pick up the money at the apartment, at the Western Arms Apartments?

A. Yes, she was the one that came in for it.

Q. Did she give you a receipt for the money she took? [252]

A. Well, sometimes she did and sometimes she didn't.

Q. You had a triplicate receipt for each item of rent collected, didn't you? A. Yes.

Q. Did she take those, one of the triplicates with her?

A. Well, sometimes she did and sometimes she forgot them.

Q. Whether she forgot them or not, she didn't take them with her sometimes?

A. That is right.

Q. Now, did you receive instructions from Miss Cosgrove as to what you should do in case you needed supplies?

A. No. I just went ahead and ordered my supplies like I had always done.

Q. Do you recollect a dispute with the painter concerning two-tone painting of one of the apartments?

A. I remember the difficulty in the Apartment 304. These painters, after they came up there Miss

(Testimony of Maude Kennedy.)

Cosgrove told them what kind of paint they had to use, and they said they had never used it, and if they did use it they wouldn't stand good for it.

Well, they did use it and it didn't cover, so I told Miss Cosgrove until it was repainted or something done to it I wouldn't show it.

So the apartment sat there for almost a month before [253] she got the painters back again to do the painting over, and then they came in and put some kind of shellac or something over it, and they got their money.

Q. I had in mind the problem, if there was one, about harmonizing a color scheme in the apartment at the Western Arms. I may be confused on that, a two-tone coloring.

A. Maybe you are thinking of 119. She said she was going to do a trick deal in there, yes. She put one end of it yellow and the other brown, and to date it has three coats and it still isn't covered.

Q. Now, as to carpeting, did Miss Cosgrove have some new carpeting, or did you have a dispute or trouble concerning some new carpeting?

A. No, there was never any new carpeting put down while Miss Cosgrove——

Q. I was referring to the lobby.

The Court: Which establishment is this?

The Witness: Western Arms. In the lobby?

Q. (By Mr. Enright): Yes. The old lobby carpets.

A. The old lobby carpets?

Q. Did she say she was going to put in new carpeting in the lobby?

(Testimony of Maude Kennedy.)

A. Yes, and I rented the apartment and I couldn't get in touch with Miss Cosgrove, so I found there was some old carpet that had been taken up out of the lobby in the trunk [254] room. So I had Mr. Waddell come over and we took the carpet out and he assured me I had enough there to cover this Apartment 301, which was a large apartment.

Mr. Whyte: I am going to move the last be stricken as hearsay, your Honor, what Mr. Waddell assured her.

The Witness: I talked to him.

The Court: I know, but he will have to come here to tell us. We can't take from you what he said. That is hearsay.

Q. (By Mr. Enright): You had a conversation with Mr. Waddell and then later you had him do some work on the carpeting? A. Yes.

Q. And you had it placed in the apartment?

A. That is right.

Q. So Miss Cosgrove didn't buy new carpeting for that area. A. That is right.

Mr. Enright: You may cross-examine.

Cross Examination

Q. (By Mr. Whyte): Mrs. Kennedy, I believe you stated you saw Mr. Hallberg on only three occasions, the first one on or about December 3rd, when Mr. Richman brought him in,—

A. Yes, sir, that is right.

Q. —and introduced him to you? [255]

A. That is right.

(Testimony of Maude Kennedy.)

Q. The second occasion was on Saturday or Sunday following, when you met Mr. and Mrs. Hallberg, is that right? A. In the lobby.

Q. And the third occasion on February 6th, on a Saturday morning? A. That is right.

Q. You are quite sure those are the only occasions upon which——

A. Those are the only occasions I ever remember seeing Mr. Hallberg.

Q. Do you recall that on December 2nd Mr. Hallberg and I came to the Western Arms Apartment building and requested that—either December 1st or December 2nd—spoke to you, met you and asked about your rents? Do you recall that, Mrs. Kennedy?

A. That was before Mr. Hallberg took over.

Q. Do you recall having seen——

A. I certainly——

Q. ——Mr. Hallberg on that occasion?

A. I was stating the times I had seen him after he took over.

Q. We all understand what your testimony was before, Mrs. Kennedy. A. All right. [256]

Q. There were occasions upon which you were not at the apartment building, is that not correct?

A. Why, certainly.

Q. You had an assistant manager?

A. That is right.

Q. Your assistant was in charge when you were gone? A. That is right.

Q. How frequently would that happen?

(Testimony of Maude Kennedy.)

A. Well, one day a week.

Q. Was it only one day a week or was it more often that you were away and left the apartment in charge of your assistant?

A. Every other Friday and every other Saturday. I didn't necessarily go away; I wasn't on duty.

Q. Did you have an apartment there?

A. Yes, right facing the lobby.

Q. Now, when you say every other Friday and every other Saturday, by that do you mean to say that you were never out of the apartment house on any other occasion except on every other Friday and every other Saturday?

A. I am trying to say that any time I was out the assistant was there. It never was alone.

Q. I am trying to find out how frequently you were out when the assistant was left alone in the apartment. A. I told you—— [257]

The Court: What he wants to get is how much time you wouldn't be there and the assistant would. Would it happen that you would go out for an hour or two or would you go out for a morning or afternoon during the week, other than your day off?

The Witness: Very, very seldom.

The Court: Did you have a division of time you were on duty and time your assistant was on duty?

The Witness: That is right.

The Court: What was that division?

The Witness: Every other afternoon two hours off. When I was off the assistant would be on, and vice versa.

(Testimony of Maude Kennedy.)

The Court: Thank you.

Q. (By Mr. Whyte): I didn't quite catch your last answer, Mrs. Kennedy.

Mr. Whyte: Will you read the answer, please, Miss Reporter?

(The answer was read.)

Mr. Enright: You were off duty every other afternoon for two hours, and you were off duty every other Friday and Saturday, is that right, Mrs. Kennedy?

The Witness: I was off duty, yes.

Q. (By Mr. Whyte): Now, during those periods when you were off duty, did you ever leave the apartment building? A. Very seldom. [258]

Q. Where would you be, in your room?

A. That is right.

Q. So that if Mr. Hallberg or Mrs. Hallberg had come into the lobby of the apartment building at those times, when you were off duty every other day for two hours and every other Saturday and every other Friday, you wouldn't have seen them, would you?

A. No, but my assistant would.

Q. You mentioned the fact that you would order supplies. From what did you pay for those supplies, Mrs. Kennedy?

A. It was paid from the office. We dealt with the West Coast, and when I speak of supplies I mean soap and scouring powder for the maids.

Q. You say that was paid from the office?

A. That is right.

(Testimony of Maude Kennedy.)

Q. Did you have a petty cash fund at the office?

A. I certainly did.

Q. About how much did that fund consist of in your apartment? A. \$100.00.

Q. What other items did you take care of besides paying for supplies, such as soap, out of your petty cash fund?

A. We did not pay for soap out of our petty cash. The West Coast bill was taken care of from the office. [259]

Q. I misunderstood you then. Just tell me again what you used your petty cash fund to pay for.

A. We charge a dollar deposit on every key that is given the tenant. When they move out we return that. That goes in with the rents.

When they move out we refund them a dollar on each key, which is taken out of the petty cash.

Q. What else did you use petty cash for?

A. Any little bills that might come up that we had to pay petty cash. The assistant, the housekeeper, she did all the curtains, which was paid out of petty cash.

Q. Did you ever cash checks out of petty cash?

A. Never. No checks ever were cashed out of petty cash.

Q. Anything else that you ever did with petty cash, any other disbursements except—

A. Well, we paid, give the can man every time he comes a dollar.

Q. What man?

A. The can man, the man that collects the cans.

(Testimony of Maude Kennedy.)

Q. Thank you.

A. Because there is always stuff that we want to get out of the apartment house, and that way he will take anything we give him. So we pay him a dollar extra; that is taken out of petty cash. [260]

Q. Well, let's see whether we have them all. I am referring now to the things that you paid for out of petty cash. You made refunds on the keys?

A. That is right.

Q. You took care of little bills?

A. That is right. If someone came in, like we hired extra help from the employment agency, that was paid out of petty cash.

Q. All right. Extra help from the employment agency, that is another item?

A. That is right. When they came in for, Mr.—we had a man that came in there and washed the windows. I can't say his name right now. He washed kitchen walls down, and that was all paid out of petty cash.

Q. Washing windows and walls, paid from petty cash.

A. Or when a kitchen or bath had to be washed.

Q. And the can man was paid from petty cash?

A. That is right.

Q. And the curtains were paid for from petty cash? A. That is right.

Q. Did you have any other fund of money on hand at the apartment, besides the petty cash?

A. No, we did not.

The Court: What would you do if a tenant there

(Testimony of Maude Kennedy.)

wanted to either get a check cashed or wanted to pay rent with a [261] check and get some change back, or something of that kind? Did you have situations of that sort?

The Witness: No, we didn't do that sort of thing at all. And the tenants understood they couldn't get checks cashed at the house.

The Court: You never did that kind of business?

The Witness: That is right.

Q. (By Mr. Whyte): I understood you to say that there was no other fund on hand at the apartment from which you could have taken care of key refunds, the little bills, the can man, the extra help for window washing or walls, the curtains and the othem items you mentioned payable out of petty cash, no other funds?

A. No; that is right.

Q. If you hadn't had that petty cash fund there would have been nothing from which you could have paid any of those items then?

Mr. Enright: Objected to on the ground it is incompetent, immaterial and irrelevant.

The Court: Sustained.

Mr. Whyte: Your Honor, it goes to show, of course, that when Mr. Hallberg did not take from the managers of these apartment houses their petty cash funds at the time he relinquished his receivership he did not do so for the very good reason these funds were part of the operating assets [262] of the apartment building.

(Testimony of Maude Kennedy.)

The Court: I don't mean by the ruling to exclude that theory. I just think the immediate question was not good.

Mr. Whyte: Very well, your Honor.

The Court: I am not accepting that theory for the moment, either. I am just not passing on it.

Q. (By Mr. Whyte): Mrs. Kennedy, did you ever have occasion to go out to the West Coast Specialty Company to pick up any supplies?

A. I certainly did.

Q. And when did you do that?

A. Whenever I needed something quickly and couldn't get a delivery on it, I often did it.

Q. You did that sometimes on days which were not your regular days off?

You say you had two hours off every other afternoon and every other Friday and every other Saturday you had off. Let's suppose that you had something you had to get from the West Coast Specialty Company on Monday afternoon, and you were in a hurry for it, would you go out to West Coast Specialty and get it?

Mr. Enright: Objected to on the ground the question is argumentative, compound, vague and indefinite, and uncertain, unintelligible.

The Court: Do you understand the question, Miss Witness? [263]

The Witness: No.

The Court: Ask it again.

Q. (By Mr. Whyte): Mrs. Kennedy, you have told us your days off were every other afternoon

(Testimony of Maude Kennedy.)

for two hours and every other Friday, every other Saturday.

Now, let's suppose on a Monday afternoon, one of the afternoons which was not your regular afternoon off, you found that you had to purchase something from the West Coast Specialty Company, and it was urgent, would you go and get it on occasions?

A. I would always get it on my time off. I had plenty of time off to get it.

Q. I am asking you whether or not you ever went to get things at the West Coast Specialty Company on days which were not your regular days off.

A. Not that I can remember of it.

Q. At the time Mr. Hallberg assumed his duties as Receiver, on or about December 1, 1953, can you recall how many vacancies there were at the Western Arms Apartments?

A. No, I cannot.

Q. Do you have any records with you that would show that?

A. I have no records with me.

Q. Do you have any records at the apartment—

A. I certainly do. [264]

Q. —that would show your vacancies?

A. They certainly should; my ledger should.

Q. I am going to request, Mrs. Kennedy, that you return and bring with you the records from your apartment building which will show the vacancies at the time Mr. Hallberg took over on the 1st of December, and I would like you to bring with you your records showing the vacancies all

(Testimony of Maude Kennedy.)

during the three-month period of December, January, and February, during which Mr. Hallberg was in charge of the apartments.

Will you do that, please?

Mr. Enright: Will you, Mr. Whyte, obtain permission for this manager, from counsel in the courtroom who is representing the owner. They have control of the records, Martin, Hahn & Camusi, attorneys for the plaintiff.

Mr. Powsner: I am not aware that the records are any place but the apartment house. I will obtain them, if I can. If they are in our possession we will have them.

Mr. Whyte: I would like to question Mrs. Kennedy with reference to them. Do you have any objection to her bringing them in?

Mr. Powsner: Not in the least.

Mr. Whyte: I will ask the court to instruct Mrs. Kennedy to return for further cross examination, bringing those records with her, of the vacancies during the three months when Mr. Hallberg was managing the apartment. [265]

Mr. Enright: I object to that on the ground it will neither tend to prove nor disprove any point involved here.

The Court: It might tend to prove the success or failure of Mr. Hallberg in keeping a place filled with tenants.

Mr. Enright: Well, this is the lady that managed it. She is the one that rented the apartments. The Receiver didn't do it. Perhaps she can answer.

(Testimony of Maude Kennedy.)

The Court: It is just something I think we would have to find as a result of a line of inquiry.

When can you conveniently follow out that request?

The Witness: Well, any time that you say.

The Court: Can you go out and get them and get back this afternoon?

Mr. Enright: I might state to the court this witness has been under subpoena. I understand she has a heart condition.

Is that right?

The Witness: Yes.

Mr. Enright: I didn't bring her in yesterday. I want the court to know it beforehand. I am sure she will be here. I had to delay her one day.

The Court: How about Monday at 11:00 o'clock?

The Witness: See, I am just giving up the managing of this building as of tomorrow night, and I had promised Mr. [266] Udall, the man that is overseer right now, to be there to talk to the new manager Monday morning.

The Court: How about Monday afternoon?

The Witness: That would be much better.

The Court: 2:00 o'clock Monday.

The Witness: That would be better.

The Court: Thank you.

Q. (By Mr. Whyte): Mrs. Kennedy, you said something about Apartment 119? A. Yes.

Q. Was that an apartment which was in rather poor condition, in your opinion?

A. Well, it needed painting.

(Testimony of Maude Kennedy.)

Q. Was it vacant?

A. It was vacant and I had it rented. It was vacated and I rented it.

Q. With reference to the painting, was it vacant before it was painted, immediately before it was painted? A. Yes.

Q. When was it painted?

A. The people moved out. I had it rented, and I called Miss Cosgrove and told her I had to get the apartment painted immediately, and she said she would be out, and I said, "I can't wait."

Mr. Whyte: I am going to move the answer be stricken [267] as not responsive.

Mr. Enright: I submit the answer is responsive.

The Court: Motion denied. You may inquire further.

Q. (By Mr. Whyte): When was the apartment painted, Apartment 119?

A. It was started about a day or two days after it was vacated.

Q. Was it in December? Was it in January?

A. Now, I don't remember.

Q. It was sometime during Mr. Hallberg's tenure as Receiver that it was painted?

A. That is right.

Q. Was the apartment vacated immediately before it was painted? A. I told you——

Q. It was? A. A couple of days before.

Q. It was vacated? A. It was vacated.

Q. Who instructed you to paint the apartment?

(Testimony of Maude Kennedy.)

A. Miss Cosgrove. She said she would be out and pick the colors.

Q. After the apartment was painted, how soon did you rent it?

A. I had it rented before it was painted. [268]

Q. Now, I have understood you to say, and you have an opportunity to correct your testimony if I am misinterpreting it—I don't want to put words in your mouth at all—I understood you to say the apartment was vacated immediately before it was painted. Is that correct or is it not?

A. I said it was vacated immediately before it was started to be painted.

Q. Well, the apartment was vacated. Was it vacant after it was vacated?

A. It must have been.

Mr. Enright: I object on the ground it calls for a conclusion of the witness; it is argumentative.

The Court: It would necessarily be for a short time. Once you vacate something, there is nothing there.

The Witness: May I say something?

Q. (By Mr. Whyte): Please just answer the questions, Mrs. Kennedy. Was the apartment vacant after it was vacated? A. Yes.

Q. Then about two days later it was painted at Mrs. Hallberg's request, is that right?

A. At my request.

Mr. Whyte: Miss Reporter, I wonder if we can go back on the record. Will you go back five or six questions?

(Testimony of Maude Kennedy.)

(The record was read.)

Mr. Enright: I would like to have the previous questions [269] and the witness' previous answers, that she informed—these are not her words—Miss Cosgrove the apartment should be painted. Counsel's question now is a play upon words, as to who requested it.

(The record was read.)

The Court: I recall that. I don't think that it is a very subtle thing to observe; its rather open.

We will take our afternoon recess.

(Short recess taken.)

Q. (By Mr. Whyte): Referring to this Apartment 119, after the apartment was painted, somebody moved in, a tenant moved in, Mrs. Kennedy?

A. A tenant moved in. May I explain it?

Q. That is all. That is all, you have answered my question.

Has it been rented ever since then, so far as you know, that apartment? A. It has.

Q. Does it look pretty smart? A. No.

Q. But it has been rented continuously?

A. It was rented continuously before.

Q. It has been rented continuously since it was painted, is that correct?

A. That is right. [270]

Q. Did I understand you to testify in my cross examination it was vacated a few days before it was painted?

A. I didn't say a few days.

Q. What did you say?

(Testimony of Maude Kennedy.)

A. I said it was vacated and I called Miss Cosgrove and told her I had to have it painted immediately, because I had it rented.

Q. Now, how long did it remain vacant?

A. Just long enough to get it painted. I had the lady living in 204 waiting for 119 when it was finished.

Q. Was Apartment 119 painted with this water paint that you referred to? A. It was.

Q. That water paint is put out by the Glidden Company, is it?

A. I have no idea who it is put out by.

Q. Are you still the manager at the Western Arms, Mrs. Kennedy? A. I am.

Q. Now, with reference to this matter of refrigeration, you testified on your direct examination that you tried to get Mr. Hallberg on the 17th, the 18th, and the 19th of February, both at his office at the Oliver Cromwell and at his home without success?

A. That is right. There were two days all day long [271] that we tried to get in touch with him, and never succeeded.

Q. Is it two days or is it three days?

A. I was talking about when the refrigeration had started to go out. And that was on the 16th. Miss Cosgrove was in there either the 16th or 17th and saw the men working on it.

Q. The refrigeration went out on the 16th and Miss Cosgrove was in either the 16th or the 17th?

A. She came in to collect the money and walked

(Testimony of Maude Kennedy.)

out, and when I told her what had happened she said, "When I was in there I saw men working on the refrigeration machine." But I didn't know then that they were going to say that it was such a big job. And then——

Q. Let's try to get our facts straight here. The refrigeration went out on the 16th.

A. That is right; one box did.

Q. When did Mrs. Hallberg come in?

A. Well, I don't know whether she came in on the 16th or on the 17th. She came in to collect the money and went out through the basement.

Q. It was either the 16th or 17th?

A. That is right.

Q. Did she see the workmen working on the refrigeration?

A. She saw these people from the California, who were [272] servicing the house.

Q. Thank you. Now, you tell me that you attempted to reach Mr. Hallberg by telephone at his office or at his home?

A. That was either the 18th or 19th or the 17th and 18th, I am not sure which it was. But I think it was the 18th and 19th, the two days we tried after we found out that this was going to run into a lot of money.

Q. Consulting my calendar I find that the 18th and 19th were a Thursday and a Friday. Does that comport with your recollection, Mrs. Kennedy?

A. I just don't know.

Q. When you were attempting to reach Mr.

(Testimony of Maude Kennedy.)

Hallberg at his office, did you receive any reply to your telephone call?

A. Why, only Mr. Harrison; took all my messages.

Q. Was it Mr. Harrison who answered the telephone at the office on the 18th?

A. That is right.

Q. When you called on the 19th Mr. Harrison answered the telephone? A. That is right.

Q. How many occasions did you try, on how many occasions did you try to reach Mr. Hallberg at his home on either the 17th or 18th or the 18th and 19th?

A. I called him both days at his home, and there was [273] no answer.

Q. About what time did you call him?

A. That I would not know now. I would judge it was in the mornings.

Q. In the morning, you say?

A. I imagine it would be in the morning. I can't tell you for sure.

Q. You recollect whether you telephoned at his home in the evening?

A. I didn't try to get him in the evening. I left the messages at his office.

Q. What message did you leave with Mr. Harrison?

A. To get in touch with him some way, and Mr. Harrison said, "I don't know where he is. We can't find him."

(Testimony of Maude Kennedy.)

Mr. Whyte: I move that be stricken as hearsay, your Honor.

Mr. Enright: I object to it being stricken. It is responsive to the question.

The Witness: That was the only way I had of getting Mr. Hallberg, is through his office.

The Court: The answer is stricken, that portion of it. It is not responsive. The witness has made another answer, which I think is.

Mr. Whyte: No further cross examination.

Redirect Examination

Q. (By Mr. Enright): Mrs. Kennedy, how far is it from Western Arms to the West Coast Specialty? A. About five blocks.

Q. Do you have an automobile?

A. Yes, I do.

Q. It is available to you there at the Western Arms? A. Yes.

Q. Did your assistant manager ever report to you Mr. Hallberg had been at the building——

Mr. Whyte: Objected to as calling for hearsay.

Mr. Enright: It is a report in the due course of business in the operation of this property, one of the agents of the Receiver.

Q. (By Mr. Enright): Did your assistant manager ever report to you—please hold up your answer—that Mr. Hallberg had been by the Western Arms and at any time when you were absent on your two-hour relief in afternoons, as you ex-

(Testimony of Maude Kennedy.)

lained, or your Friday or Saturday that you had every other week——

Mr. Whyte: Objected to as hearsay, your Honor.

The Court: Overruled.

Do you understand the question?

The Witness: Do I answer? [275]

The Court: You can answer it yes or no. You can't tell the full conversation.

The Witness: Yes.

Q. (By Mr. Enright): And what was the report you received from the assistant manager?

Mr. Whyte: Again objected to as calling for evidence that is hearsay.

The Court: This is to show a report was received. I think this is one of the exceptions to the rule.

Mr. Enright: Very well, your Honor.

The Court: You may answer.

The Witness: One time.

Q. (By Mr. Enright): Go ahead and explain your answer.

A. One time when I came back, I think it was in the evening—I am not sure—Mr. Hallberg and Mr. Harrison were there and went through four or five apartments.

Q. That was the report?

A. That was the only time.

Mr. Enright: That was the report. It is a report of what took place.

(Testimony of Maude Kennedy.)

Q. (By Mr. Enright): That was the report you received? A. That is right.

Q. Concerning this painting at 119 Apartment, did you participate in or hear a conversation between Miss Cosgrove and the painter? [276]

A. Well, I did on several occasions. But may I correct that? That was paint that was only put on the living room, because I had the bath, dressing room, and bedroom done before she came out there.

Q. Before Miss Cosgrove came out?

A. Yes, and it was done in the oil paints.

Q. Did you have any conversation with her concerning the painting of the living room?

A. I was not in there when she chose the paint. The painter came out and told me what she wanted him to use.

Q. But did you have a conversation with Miss Cosgrove before the painting of the living room of 119, in which she gave you some instructions concerning the living room?

A. She gave it to the painter, the instructions.

Q. I know she did, but did she tell you, if I may lead you, "Do not let the painter paint the living room," because she wanted to give him some particular instructions?

A. She said she was going to do a trick deal on it.

Q. On the living room?

A. On the living room.

Q. Were you present during a conversation be-

(Testimony of Maude Kennedy.)

tween the painter that did the trick deal in the living room of 119? A. Part of it.

Q. State what was said.

Mr. Whyte: Just a moment. [277]

Mr. Enright: This is a conversation between the painter and Miss Cosgrove.

Q. (By Mr. Enright): Is that right?

A. That is right.

Mr. Whyte: I am objecting, no proper foundation has been laid to show this woman was present at the conversation about which she is going to speak.

The Court: Is this the conversation which you heard?

The Witness: Yes.

The Court: Who else was there?

The Witness: The painter and the man that was helping him; he had a helper there.

The Court: And Miss Cosgrove?

The Witness: That is right.

The Court: You may relate the conversation.

The Witness: Well, she wanted him to put this water——

Q. (By Mr. Enright): Try and say, the best you can, what she said and what he said.

A. Miss Cosgrove wanted him to use this water paint, and he is an old Swedish fellow that learned his trade in Europe, so, naturally, he didn't want to use that. He said——

The Court: We can't have that.

The Witness: What do you want?

(Testimony of Maude Kennedy.)

The Court: You can tell what they said, but as to explanations of the character of the people and their backgrounds [278] in Europe and so on, we can't take that as part of the conversation.

The Witness: O.K.

Q. (By Mr. Enright): State as best you can what the painter said and Miss Cosgrove said.

A. So the painter said, all right, he would use it but it wouldn't cover.

So she went out and got him a card of the colors, and he went out and got brown for the walls and yellow for one other wall—I mean one end of it. She didn't like yellow.

Q. Now, what is the name of that painter?

A. Mr. Erickson, Carl Erickson.

Q. Was he still doing painting at the apartments after this event, painting 119?

A. He didn't do any more painting for Miss Cosgrove.

Q. Did the tenants state—as I understand, there was a tenant in 204 you had rented 119 to?

A. That is right. I put her in there waiting for 119.

Q. What did she say about the painting of 119 Apartment?

Mr. Whyte: I object to that as calling for hearsay evidence.

Mr. Enright: Report of the——

The Court: Do you think it comes into the exception?

Mr. Enright: It certainly does. I take it their

(Testimony of Maude Kennedy.)

position [279] is Miss Cosgrove has done an excellent job of decorating and painting here.

We have a report of the tenant of the apartment how they liked——

Mr. Whyte: I don't know what exception to the hearsay rule you are talking about. If you are talking about the reports kept in the regular course of business, then you haven't laid any sufficient foundation for showing reports were kept in the regular course of business by the manager of this apartment building, as to what the tenants said.

You will have to produce the books and identify this woman as the custodian, and that the entries were made in the regular course of business.

I submit no exception to the hearsay rule has been fulfilled here, your Honor.

The Court: I think as to this inquiry it has not.

Q. (By Mr. Enright): Were you present at any time when a conversation was had between the tenant or the painter with Miss Cosgrove concerning the satisfactory or unsatisfactory manner in which that living room in 119 was painted?

A. He went back and did the walls over twice after the tenant got in.

Mr. Whyte: I move the answer be stricken as not responsive to the question.

The Court: May I have the question?

(The question was read.) [280]

The Court: That answer is stricken. That answer was not responsive to the question.

Q. (By Mr. Enright): My inquiry, Mrs. Ken-

(Testimony of Maude Kennedy.)

nedy, so you understand, is, were you present at any time when there was a conversation? You see, you would answer yes or no, you were present when the conversation—— A. Yes.

Q. You were present when there was a conversation? A. Yes.

Q. Who was the conversation between?

A. The painter and the tenant. You mean after it was painted?

Q. Yes. A. Yes.

Q. At any one of these conversations was Miss Cosgrove present?

A. No, she never saw the tenant.

Q. Is the tenant still living there?

A. Yes.

Q. Was the apartment living room painted twice after the first painting?

A. Yes, it was.

Q. You had a request from the tenant to have the living room repainted?

A. Yes, because it wasn't covered. [281]

Q. Will you be the manager and in control of the Western Arms' books on next Monday?

A. No, I won't.

Q. Your employment at the Western Arms——

A. I resigned as of tomorrow night, the night of the 15th.

Mr. Enright: I might point out to the court that all the records pertaining to the rental of these apartments are within the order of this court, that they be retained by the plaintiff at the Oliver

(Testimony of Maude Kennedy.)

Cromwell Apartments, and they are available to them if they want to bring them in.

The Court: Apparently, this lady will not have authority to comply. She will not have the authority on the part of the employer to possess the records on Monday afternoon, so we can't hear her at that time, unless the term of her employment be extended.

Mr. Enright: If they want to bring in the books, I am quite certain the lady will come on down here Monday.

Q. (By Mr. Enright): You will, won't you, if somebody wants to bring in the records——

A. Certainly. I just wanted you to know I had no right to do it.

Mr. Enright: Will you bring in the books, Mr. Whyte, for her testimony?

Mr. Whyte: I don't have the books, Mr. Enright. [282]

Mr. Enright: The court order is that the books be kept and records be kept out at the Oliver Cromwell Apartments. So far as I am concerned, they are there in the custody of the plaintiff. That order has never been vacated.

The Court: I don't know that the court has made any order with respect to that.

Mr. Enright: Yes.

The Court: The court dismissed the action and satisfied the judgment. Before a satisfaction of judgment is of record as to that portion of the case in which there was an adjudication, and there has

(Testimony of Maude Kennedy.)

been a dismissal of that portion of the case you wished, there was not an adjudication, so the court hasn't done anything by way of ordering things kept intact, except the court has exercised its jurisdiction over its Receiver.

Mr. Enright: I thought that included the books and records. That was my interpretation of the order. I may be in error. I appreciate your Honor's statement about the dismissal of the action.

Mr. Whyte: Somehow we will have to arrange for this book which Mrs. Kennedy has referred to be brought in, whenever the court wishes to resume.

Mr. Enright: Yes. I would say this witness, I called her, and she has not control of those books on Monday.

The Court: She will be excused at the conclusion of [283] her testimony today. If you want to call her back again you can.

Mr. Enright: I am through with the witness at this time.

Mr. Whyte: I want her to come back, to testify with reference to the books which are presently under her control.

The Court: Please be here on Monday at 2:00 o'clock.

The Witness: Yes. But I can't bring the books, Judge.

The Court: You are not expected to.

Mr. Enright: Thank you.

The Court: We don't expect you to.

(Testimony of Maude Kennedy.)

Mr. Enright: That is all.

The Court: They will have to make their arrangements.

The Witness: That is on the monthly reports. I send in the monthly report every month to Mr. Hallberg, and the vacancies were on that.

The Court: Well, they can produce the records, but they apparently want you, too.

The Witness: I see.

Mr. Enright: Step down.

Mr. Whyte: I have a question or two, Mr. Enright.

Recross Examination

Q. (By Mr. Whyte: You are leaving the Western Arms tomorrow night, Mrs. Kennedy?

A. I have resigned as of the night of the 15th.

Q. You have turned in a written resignation?

A. I certainly did.

Q. You weren't by any chance requested to leave, Mrs. Kennedy?

A. I told you that I resigned.

Q. You haven't answered my question. Were you requested to leave? A. I was not.

Mr. Whyte: I have no further questions.

(Witness excused.)

Mr. Enright: I have another manager. I said short. All I am going to find out is the number of times Mr. Hallberg was over to this other apartment house, from her.

The Court: We will hear your next witness.

EDNA LIPPHARDT

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, please?

The Witness: Edna Lipphardt; L-i-p-p-h-a-r-d-t. I am a little hard of hearing.

The Court: The witness requests that you stand closer to her, because she is hard of hearing.

Don't overlook the reporter has to get everything, and it is a tendency to speak down when you are close to a witness. [285]

Direct Examination

Q. (By Mr. Enright): Mrs. Lipphardt, were you the manager of the Fountain Manor Apartments during the period November 30, 1953, through February 28, 1954? A. Yes.

Q. Have you been an apartment house manager for some period of time in this community?

A. Yes.

Q. How long? A. Since 1930.

Q. Did you have occasion or did you meet Mr. Hallberg on or about December 1, 1953?

A. Yes.

Q. On how many occasions did you see Mr. Hallberg at that apartment house during the period December 1, 1953, to and including February 28, 1954.

A. I would say between seven, not less than twelve times; perhaps seven, eight or nine times.

(Testimony of Edna Lipphardt.)

Q. Were you introduced to Miss Cosgrove about December 1st? A. Yes.

Q. State what was said at the time of the introduction.

A. He told me Miss Cosgrove would be in charge of all the decorating, that she was his right hand and that she would [286] supervise the buildings for him.

Q. Did she, Miss Cosgrove, collect the moneys from you as the manager?

A. Not from me personally, no; from the desk clerk who took care of the books.

Q. Now, did Miss Cosgrove purchase some supplies for the particular apartment house you were managing? A. Yes.

Q. And directing your attention to the fiberglas draperies, that subject, were some purchased?

A. Yes.

Q. And the cost of those draperies, if you know?

A. Yes.

Q. What was the cost?

A. The cost, one particular pair I know of was \$29.75; at least, that was the tag on the drapery. Whether that was actually what she paid or not, I don't know. That was the tag on the drapery.

Q. You said twenty-nine. Did you mean twenty-three?

A. There was one \$29.75 and one \$23.75.

Q. What had you been paying for draperies at that apartment?

A. In that particular building we would pur-

(Testimony of Edna Lipphardt.)

chase draperies around \$6.95, \$7.95, and maybe as high as \$10.50.

Q. Did you have any difficulties concerning painting [287] while you were manager in that period of time?

A. Yes, we had four different sets of painters in the three months.

Q. Who brought those or employed those painters? A. Miss Cosgrove.

Q. Were there any holding up of the renting of any of the apartments while they were being painted? A. I beg your pardon?

Q. Was there any holding up of the renting of apartments for their being painted?

A. Yes, there was one particular apartment that we had ready—in fact, had rented. We had no lamps to put in the apartment and there were no draperies. It stood idle for a week, waiting for those.

Miss Cosgrove had promised to bring the lamps from the Oliver Cromwell, another apartment house. When she brought them they were three very small table lamps, and two of them had no shades whatever, and for the third one there was a bridge lamp shade.

Q. Now, directing your attention to the subject matter of a petition to redecorate certain apartments, did any of the tenants move out of this apartment house as a result of their being dirty or unclean? A. Yes.

(Testimony of Edna Lipphardt.)

Mr. Whyte: Objected to as calling for the conclusion of [288] the witness.

The Court: Sustained. The answer is stricken.

Q. (By Mr. Enright): All right. Did you ever report to Miss Cosgrove or to Mr. Hallberg that tenants had moved out of that apartment house because the apartments were dirty or unclean?

A. I did not.

Q. Did Miss Cosgrove call you after a hearing of a petition here and ask you to sign a statement pertaining to that subject matter?

A. She came to my apartment with a statement.

Q. Prepared statement she asked you to sign?

A. Yes.

Q. State the conversation that occurred.

A. I refused to sign the statement, saying that the tenants had moved out because of the condition of the apartments, that that was not true.

Then there was another part to the statement about a stove; there was a discussion about a stove.

Q. This is a conversation you had with Miss Cosgrove? A. Yes.

Mr. Whyte: I am going to move to strike the answer to the effect that the tenants had not moved out because of the condition of the apartments. As to the reason why the tenants moved out would be entirely beyond the knowledge of [289] this witness. It is her conclusion, purely and simply.

The Court: I understand this is simply evidence of a conversation between this witness and Miss Cosgrove.

(Testimony of Edna Lipphardt.)

Mr. Whyte: Part of what she testified to in the last answer, Judge, was apparently a conversation, but I don't think that what she said about her conclusion, as to whether they moved out, purports to be what either she said or Mrs. Hallberg said.

However, I will let the record speak for itself there.

Mr. Enright: Yes, the record will speak for itself. I asked the question, did this witness ever tell Miss Cosgrove or Mr. Hallberg that tenants moved out of that apartment house because the apartments were dirty, and her answer was no.

I am now inquiring about the conversation had between Miss Cosgrove and this witness after that hearing before your Honor.

Q. (By Mr. Enright): What was the conversation you had with Miss Cosgrove concerning the subject matter of a stove?

A. An apartment was vacant. The stove was in not too good condition. Miss Cosgrove said, told me she was going to order a new stove.

In the meantime I rented the apartment and the people moved in at the same price we had always gotten for the apartment. About five days after the party had checked into [290] the house a new stove was delivered and placed in the apartment. But they didn't rent the apartment because a new stove was put in there. That was the bone of contention.

Mr. Whyte: Again objected to as purely conclusion of the witness.

(Testimony of Edna Lipphardt.)

The Court: That was not the reason the apartment was rented, that that was a bone of contention is stricken.

Q. (By Mr. Enright): Was that the subject of the conversation you had with Miss Cosgrove at the time she asked you to sign this written statement?

A. Yes.

Mr. Enright: May I ask the testimony be reinstated?

Q. (By Mr. Enright): Did you hear any conversations between any one of these four different painters and Miss Cosgrove during this three-month period? You could answer that yes or no, whether you heard the conversation.

A. Yes, I heard them.

Q. Were there more than one conversation with the painters?

A. Yes, there were quite a few; not only conversations but arguments.

Q. Well, that is a conclusion, Mrs. Lipphardt. Now, will you state, as best you can recollect, the substance, the words used by Miss Cosgrove and the painters, commencing with the first conversation?

A. The first painters that we had in the building working was the Superior Paint Company, Mr. Kelly, and a man working for them. The particular work being done was a dinette being painted.

Miss Cosgrove objected to the degree of color. This was supposed to be a pale green and she said there was too much yellow in it.

So Mr. Kelly finished painting the dinette and

(Testimony of Edna Lipphardt.)

walked off the job.

Q. Now, please state the next conversation and not what you observed, but, as best you can recollect, what was said by Miss Cosgrove.

A. I think the next group, Mr. Brewer and a Mr. Provenshore; they again did work that Miss Cosgrove did not like.

Q. What did she say? You must tell us what she said.

A. I see.

Q. That is the point. That is the point.

A. She didn't like the colors. The painters couldn't get the degree of color she wanted, or the tone, the right tone in the color.

Q. That was the substance of the conversation?

A. Yes, sir.

Q. What happened to those painters?

A. They quit. Or she fired them; I am not sure on [292] that. But, anyway, they were off the job.

Q. Is that in substance the conversations that were had with the other painters?

A. I beg your pardon?

Q. Was that the substance of what was said?

A. Yes, that seemed to be the main objection always, was the color.

Q. Do you recollect a conversation being had by Miss Cosgrove and the painters concerning painting Apartment 323?

A. Yes. That again was Mr. Kelly, the painter. He was called in to look at the apartment.

There again it was a green wall, a green carpet, and Miss Cosgrove wished to change the color in the

(Testimony of Edna Lipphardt.)

living room, in particular, and Mr. Kelly refused to do it because he said the paint was too good on the wall and it didn't need painting.

Q. What is Mr. Kelly's first name?

A. That I don't know.

Q. What is his employer's name?

A. The Superior Paint Company.

Q. They are here in Los Angeles, are they?

A. Yes.

Mr. Enright: You may cross examine. [293]

Cross Examination

Q. (By Mr. Whyte): Mrs. Lipphardt, are you still employed as the manager of the Fountain Manor Apartments? A. No.

Q. May I ask when you left that position?

A. What?

Q. May I ask when you left that position?

A. On March 1st.

Q. Were you discharged by Mrs. Tidwell?

Mr. Enright: To which objection is made——

The Witness: Yes; Mr. Udall.

Mr. Enright: ——on the ground it is incompetent, irrelevant and immaterial whether Mr. James Udall, Mrs. Tidwell or anybody else doesn't like this witness. It is immaterial as to her rendering services to this Receiver.

The Court: It certainly is immaterial on that basis, but it might enter into the picture of bias, I don't know. We will let it stand.

(Testimony of Edna Lipphardt.)

Mr. Whyte: That was the purpose of the question, your Honor.

Q. (By Mr. Whyte): You mentioned a Mr. Kelly, a painter, who walked off the job.

A. Yes.

Q. Isn't it a fact that you told Mrs. Hallberg you [294] wanted to get rid of Mr. Kelly on that job?

A. No.

Q. Didn't you tell Mrs. Hallberg that Mr. Kelly was a friend of the former manager and that you didn't want him around?

A. No.

Q. How long had it been before December 1, 1953, since the apartments had been painted at the Fountain Manor?

A. Now, let me understand your question.

Q. Surely.

A. You mean any apartment in the building?

Q. Yes. Can you tell me how often the apartments were painted under Mr. Richman?

A. Whenever they needed it.

Q. Let's take a particular apartment. About how long did each apartment go, in point of time, before it would be repainted?

A. That would be dependent on the particular apartment. One apartment might be dreadfully abused and might have to be painted in six months, and another might go two or three years. It depends on individual apartments.

Q. When you said "dreadfully abused" you mean the apartment would become frowzy-looking or dirty-looking in a period of a few months?

(Testimony of Edna Lipphardt.)

A. I am just speaking—you almost asked me a hypothetical [295] question, and I am answering it that way.

I said an apartment might become so soiled in six months, and have to be done, and another might go for two years.

Q. In either event, at the expiration of a few months or six years or a few years the apartment would become dirty in appearance?

A. That is right.

Q. So that from time to time there were individual apartments at the Fountain Manor which were dirty in appearance?

A. Yes. Now, for instance, I might even quote one that you may bring up later. Apartment 212, the bathroom needed painting very badly. The lady that lived there was an elderly lady who couldn't stand the smell of paint, and she asked us not to paint it while she was in the apartment. Naturally, that was in bad condition.

And another one you might bring up was Apartment 117. The man there was afflicted with asthma and he didn't want any work done while he was in there.

Q. Now, how did you find your vacancies at the Fountain Manor, Mrs. Lipphardt? What was the percentage of vacancy in the apartment building, let's say, in the six months immediately prior to Mr. Hallberg's being appointed the Receiver?

Can you tell me approximately what proportion

(Testimony of Edna Lipphardt.)

of the [296] apartments were vacant at any one time?

A. Yes, we would carry—I don't know percentage, but we would carry two or three vacancies. We might go as high as five, and then maybe we would get down to one.

Q. This was prior to December 1, 1953?

A. Yes. But you must remember we had 42 doubles and 6 triples, and big apartments naturally are vacant more often than small ones. We would run five and six vacancies.

Q. How was your vacancy factor from December 1, 1953, up to February 28, 1954?

A. There again, as I say, we ran—we might have had as high as six, seven or eight at one time, and then be down again to two.

Q. Was it about the same vacancy factor as had obtained prior to December 1st?

A. Yes, just about.

Mr. Whyte: Just a moment. I don't think I have any more questions, but I would like to speak to my client a moment.

Q. (By Mr. Whyte): Do I understand you to say, Mrs. Lipphardt, that the maximum time during which an apartment would be left unpainted was about three years?

A. I don't think I said it would be left unpainted three years. I said it might go that long without having need to be painted. There is a distinction there, you know. [297]

Q. You see, you are an apartment manager. I

(Testimony of Edna Lipphardt.)

am just a poor lawyer and I don't really know about these matters of managing apartment buildings.

In any event, there were occasions when an apartment in the Fountain Manor would go for, say, three years without having been painted?

A. I wouldn't be sure of that, without looking up the records.

Mr. Whyte: I think that is all, Mrs. Lipphardt. You may step down as far as I am concerned.

Redirect Examination

Q. (By Mr. Enright): Are you employed now, Mrs. Lipphardt? A. I beg your pardon?

Q. Are you presently employed?

A. Oh, yes.

Q. Where? A. At the Lakeview Arms.

Q. Are you manager? A. Yes, sir.

Q. Apartment house? A. Yes.

Q. You have been there quite a while?

A. Yes; 94-unit building.

Q. Concerning this vacancy factor, do you recollect [298] how many vacancies there were when the Receiver took over, that day as compared with the vacancies on the day he left, February 28th?

A. Without looking at the records, as near as I can remember the day he took over, we had 406 vacant, which was being painted at the time, and 301, a triple, and I believe on the day Mr. Hallberg gave up the receivership 301 was vacant, and 117.

Q. Has it been your experience for the years

(Testimony of Edna Lipphardt.)

that you have been managing apartments in this community, that there is not as great a vacancy factor in the winter months as there is in the summer months? A. That is true.

Mr. Enright: No further questions.

Mr. Whyte: No further questions.

(Witness excused.)

Mr. Enright: Thank you for accommodating these two witnesses.

May she be excused?

The Court: Yes.

Mr. Whyte: Shall I call my next witness, your Honor?

The Court: Yes, please.

Mr. Whyte: Mrs. Hallberg, will you take the stand, please? [299]

CATHERINE COSGROVE HALLBERG

called as a witness on behalf of the Receiver, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, please?

The Witness: Catherine Cosgrove Hallberg.

Direct Examination

Q. (By Mr. Whyte): You are the wife of Mr. Roy Hallberg, the Receiver in this action?

A. I am.

Q. For how long have you been Mrs. Hallberg?

A. Since 1940.

(Testimony of Catherine Cosgrove Hallberg.)

Q. Where did you go to school, Mrs. Hallberg?

A. University of Minnesota.

Q. Did you receive a degree there?

A. I received a degree of Bachelor of Business Administration.

Q. In what year? A. 1932.

Q. Will you please state what, if any, business experience you had following your graduation from the University of Minnesota in 1932?

A. Yes, I was statistician for a branch office of Payne Weber & Company, and then in New York I was an account [300] executive or investment counsel with Johnston & Longquist.

Q. Were you at that time one of two women investment counselors in New York?

A. Yes, based on the fact there were just two women in the organization of the Investment Counsel Association of America, when it was founded in 1938, or something like that.

Q. How long did you keep up your investment counseling work in New York?

A. I continued working until about 1942, shortly before our daughter was born; longer than that, but——

Q. For how long had you been employed with Johnston & Longquist?

A. Until about 1940, I think.

Q. My question was for how long had you been employed, for a period of how many years by them?

A. Close to three years, Mr. Whyte.

Q. What, if any, decorating training or experi-

(Testimony of Catherine Cosgrove Hallberg.)

ence had you had, Mrs. Hallberg, prior to this receivership?

A. Just the decorating experience, now?

Q. Yes. Take decorating first and we will take housekeeping later, if that is necessary. Just decorating.

A. Well, from an early interest in the subject to a course at the Traphagen School of Design, as color consultant to a general overseeing of certain properties that some of [301] our clients had at Johnston & Longquist. We had a real estate firm handling them, but Mr. Johnston was interested in overseeing the real estate firm, to doing our various apartment buildings, assisting friends. I haven't gone in for it commercially.

Q. You mentioned the Traphagen School of Design. Where is that located?

A. That is in the 40's on Broadway in New York.

Q. For how long did you attend that institution?

A. That was during the course of the one school year.

Q. What year was that?

A. It was just while I was at Johnston & Longquist. It was approximately '39, I believe.

Q. How often did you attend classes there, Mrs. Hallberg?

A. In the evenings, two or three times a week.

Q. What did your courses consist of?

A. I took just the color consulting.

(Testimony of Catherine Cosgrove Hallberg.)

Mr. Whyte: May I have the incinerator files, please, Mr. Enright?

Mr. Enright: They are here some place. Maybe Mr. Richman could help you. I am not familiar with them myself. Martin, Hahn & Camusi produced them.

Mr. Whyte: The Canterbury, Mr. Richman.

Mr. Enright: You have the Oliver Cromwell.

Mr. Whyte: That is what I want.

Mr. Enright: You said the Canterbury.

Q. (By Mr. Whyte): Mrs. Hallberg, I call your attention to a file marked Oliver Cromwell Incinerator, and ask you whether you have ever seen that before?

A. Yes, I have, in the office.

Q. I show you a copy of a letter dated December 30, 1953, addressed to Mr. Roy E. Hallberg from John Whyte, reading:

“Dear Roy,

“I am returning herewith the files covering the installation of incinerator equipment at both the Canterbury and the Oliver Cromwell apartment buildings.”

Do you recollect having received the original of that letter on or shortly after the date it bears?

A. Yes, I do.

Q. Following the receipt of that letter, together with the files enclosed, did either you or Mr. Hallberg in your presence request Mr. Harrison, the bookkeeper, to forward to Air Pollution Control, Inc. the blueprints with reference to the installa-

(Testimony of Catherine Cosgrove Hallberg.)

tion of the incinerator equipment at the Oliver Cromwell and the Canterbury.

A. Yes. After we received the letter, it was just about one day after that, it was on the part of the table [303] that all mail was always placed for Mr. Hallberg's attention, and he saw it and he said, "Well, that is that. We go ahead. Attend to this," to Mr. Harrison.

I don't remember the exact words, but certainly to that effect.

Q. You received a warning notice from the smog control authorities on or about January 13th, is that correct?

A. That is correct.

Q. What, if anything, did you or Mr. Hallberg in your presence do after you received that warning notice?

A. Our first move was to call Mr. Manalis of the Oxyaire and told him about it immediately.

He said it was quite all right, he would call the Air Pollution Control Authority and inform them that they were going to progress the work, progress with the work as soon as possible, and that we didn't have to worry about it, he would take care of it.

Q. Who was it that called Mr. Manalis, can you recall?

A. Mr. Harrison and I have both called Mr. Manalis any number of times.

Mr. Enright: I move to strike the answer as not responsive.

(Testimony of Catherine Cosgrove Hallberg.)

The Witness: I have called him and I know Mr. Harrison called him.

Mr. Enright: I move to strike the answer as not [304] responsive. The question was who called him on that occasion.

The Court: Well, I take the answer to be they both called him.

Mr. Enright: I don't know. I guess you could deduct that.

The Court: Well, strike the answer. Ask the witness to try again.

Q. (By Mr. Whyte): I am speaking now of the conversation which took place with Mr. Manalis immediately after the receipt of the warning notice on January 13th, who called Mr. Manalis at that time?

A. Mr. Harrison called him the first time, I believe.

Q. Were you present at that conversation?

A. There were so many calls to Manalis, John, I don't remember if it was the first time when I was there or not.

Q. Did Mr. Harrison report to you his conversations with Mr. Manalis? A. He did.

Q. What did he say?

A. He said that Mr. Manalis would take it up with the Air Pollution Control Authority, we weren't to worry, and he would take care of it.

Q. What was the next occasion upon which you or Mr. Hallberg, to your knowledge, had conversations with Air [305] Pollution Control, Inc.?

(Testimony of Catherine Cosgrove Hallberg.)

A. Probably after the legal document came. I don't know what you call it.

Q. By "legal document" you mean the citation, the criminal complaint that was issued about January 27th? A. Yes.

Q. Following the issuance of that criminal complaint on or about January 27th, what did you do?

A. I went to the Air Pollution Control Authority. There were calls to Mr. Manalis first, and he again said it was nothing, he would handle it, and at the most it would cost \$50.00. But, nevertheless, I went out to Mr. Gordon Larson's office.

Q. There has been some testimony in this record with reference to the breakdown of refrigeration at the Western Arms.

Can you tell us when you first—I mean you personally, Mrs. Hallberg,—when you first had knowledge that the refrigeration system had gotten into trouble at the Western Arms Apartment Hotel?

A. The afternoon of February 17th; it was on a Wednesday.

Q. Will you state what happened at that time, please?

A. I was in the building twice that day. The second time was about 4:30 in the afternoon, when I had gone back [306] to pick up some draperies.

I talked to the young chap down in the service department, because Mrs. Kennedy had said one box was out. I talked to him and asked him how he was coming along, and he said, "Oh, fine."

Q. Go on. A. That was the first time.

(Testimony of Catherine Cosgrove Hallberg.)

Q. This was the afternoon of the 17th?

A. This was the afternoon of the 17th.

Q. What, if anything, happened on the 18th?

A. On the 18th, when I got into the office, Mrs. Findeisen, who was in the office at that time, and not Mr. Harrison, informed me that Mrs. Kennedy had called the previous evening. Am I allowed to say what she said?

Q. You can tell what Mrs. Findeisen said to you, yes.

Mr. Enright: I object. It will be hearsay. Let her recite what she did. She received a phone conversation.

The Court: Let's follow Mr. Enright's suggestion.

Mr. Whyte: I beg your pardon?

The Court: Let's do what Mr. Enright suggested.

Mr. Whyte: I didn't catch his suggestion. That is the reason I inquired.

Mr. Enright: My point is the witness should be asked did she receive a telephone call. She did. Then what did she do, the acts. That is telling what happened, without [307] abusing the hearsay rule.

Q. (By Mr. Whyte): You received a telephone call on the 18th of February?

A. That is right.

Q. From whom?

A. Miss Findeisen had, before I arrived in the office, from Mrs. Kennedy the first thing in the morning reporting they had run into trouble, and

(Testimony of Catherine Cosgrove Hallberg.)

she had overheard a telephone conversation between the California Refrigeration young chap and the 25-year-old owner-manager of the concern, stating they didn't know what was wrong.

So she had taken it upon herself to switch back to Mr. Daugherty of the Normandie Refrigeration, whom she had known for a long time. He had worked there that night. As a matter of fact, she also mentioned she had called Mr. Richman.

I had also telephone messages from California Refrigeration. By that time the die seemed to be cast and I——

Mr. Enright: I move to strike the entire statement of her reporting on something that violates the hearsay rule. Apparently she did nothing herself.

The Witness: I phoned Mr. Hallberg immediately.

Mr. Enright: May I have the answer stricken so far?

The Court: The motion is granted, except as to the part "I called Mr. Hallberg immediately." That part may stand. [308]

Q. (By Mr. Whyte): You say you called Mr. Hallberg immediately. That was sometime on the morning of February 18th? A. That was.

Q. Do you recall about what time, Mrs. Hallberg?

A. Probably it was around 10:00, 10:30.

Q. What did you tell Mr. Hallberg?

Mr. Enright: I object on the ground of hearsay.

(Testimony of Catherine Cosgrove Hallberg.)

The Court: I don't think so.

Mr. Enright: All right.

The Court: We are inquiring into the quality of acts of Mr. Hallberg and those who worked with him. This question may be answered.

Mr. Enright: Very well.

The Witness: I explained to Mr. Hallberg that the California Refrigeration had quoted \$900.00 repair price. They wished to flow out the pipes. They inferred they were full of—I can't remember the word now—and that the Normandie Refrigeration had been on the job, had said they could put it back in running order without this major operation. In other words, I gave him all the facts.

Q. (By Mr. Whyte): Do you know what, if anything, Mr. Hallberg did?

A. Mr. Hallberg, through having had experience——

Mr. Enright: I move to strike "through having had experience." [309]

The Court: That portion of it will have to go out. You will just have to tell us what you saw him do or heard him say.

The Witness: Mr. Hallberg decided that——

Mr. Enright: I move to strike what Mr. Hallberg decided.

The Court: You can't tell us what was in his mind.

The Witness: Well, he told me that.

Q. (By Mr. Whyte): What did he tell you or what did he do that you saw?

A. Mr. Hallberg told me that he would be very

(Testimony of Catherine Cosgrove Hallberg.)

inclined to go along with the Normandie Refrigeration theory; they were there, that was it. We would see if they could do as they promised to do.

Q. Did Mr. Hallberg, to your knowledge, go over to the Western Arms and inspect the refrigeration after it had been installed?

A. Yes. He came in later that day, oh, after it had been installed.

Q. Tell us about when he came in and what he did.

A. He came in, we parked—we always parked right by that thing—came in and looked at it. I was there with him, too. I met him.

And I think we talked to John Daugherty's assistant, and he again decided that was where he would cast his opinion. [310] So we walked away until the thing was completed.

Q. Is it your testimony that Mr. Hallberg and yourself visited the Western Arms on the 18th of February and inspected the refrigeration equipment?

A. If you can say being there and watching a little bit is inspecting, yes.

Q. Mrs. Hallberg, were you present in the courtroom when Mrs. Kennedy, the manager of the Western Arms, testified that either on the 17th or 18th of February, or the 18th or 19th, she was not sure which, she put in several telephone calls to Mr. Harrison at the office of the Oliver Cromwell, in an effort to reach Mr. Hallberg?

A. I heard that.

(Testimony of Catherine Cosgrove Hallberg.)

Q. Was Mr. Harrison present—was Mr. Harrison employed as the bookkeeper or in any other capacity with the receivership either on the 17th, the 18th or the 19th of February?

A. He was not.

Q. Who was in the office at that time?

A. Miss Findeisen.

Q. You recollect about when Mr. Harrison had been discharged? A. On February 12th.

Mr. Whyte: I have no further questions on direct, your Honor. [311]

Cross Examination

Q. (By Mr. Enright): Mrs. Hallberg, as I understand it, you phoned to Mr. Hallberg on the 18th concerning this refrigeration?

A. That is right.

Q. In the morning? A. That is right.

Q. Where did you phone to him?

A. I phoned to him at Mr. Byram's office and he called back very soon after that.

Q. Had you ever told Mr. Harrison or anyone else that they could reach Mr. Hallberg in Mr. Byram's office? A. I had not.

Q. So far as you know, no one knew that Mr. Hallberg could be reached at Byram's office, the County Assessor's Office, excepting yourself, is that right?

A. That I am not sure of; possible.

Q. Now, directing your attention to Exhibit B,

(Testimony of Catherine Cosgrove Hallberg.)

you did observe Mr. Hallberg make the notations on Exhibit B?

A. I did not observe him make them on many, many occasions.

Q. But on some occasions in the evening you did see him make his entry in his diary?

A. Some, yes.

Q. That would be down there at your home at Corona del [312] Mar?

A. He hauled that thing out frequently. I have seen them many times.

Q. And that would be on occasions when you, would tell him what had occurred during your experience of the day?

A. I saw him take it out of his pocket on other occasions, too, Mr. Enright.

Q. Will you answer my question as to this: He would make entries shortly after or at the time you reported to him as to what occurred during the day?

A. Well, I wouldn't say all the time, no.

Q. But usually that is what he did?

A. Sometimes.

Q. Sometimes? A. Yes.

Mr. Enright: No further questions.

Mr. Whyte: Step down, Mrs. Hallberg.

(Witness excused.) [313]

Mr. Whyte: The Receiver will now call Mr. Richman as an adverse party under Rule 43(b) of the Federal Rules of Civil Procedure.

FREDERICK I. RICHMAN

called as a witness under the provisions of Rule 43(b) of the Federal Rules of Civil Procedure, on behalf of the Receiver, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name?

The Witness: Frederick I. Richman.

Direct Examination

Q. (By Mr. Whyte): Mr. Richman, you were formerly the trustee for the Richman Trust, were you not? A. I was one of the trustees.

Q. Who was the other trustee, sir?

A. Lyda Tidwell.

Q. Is that your sister? A. Yes.

Q. For how long did you and your sister occupy the position of trustees for the former Richman Trust?

A. From the time it was organized, November 1, 1945, [314] to take effect January 1, 1946, until the Trust was terminated sometime in March of 1954.

Q. Did you manage the Trust properties during that period, sir?

A. I was agent for the trustees, and as such managed the properties.

Q. During that time you also carried on a private law practice in the City, did you not?

A. I had a license to practice law, but my practice was of very small purport.

(Testimony of Frederick I. Richman.)

Q. What do you mean by "very small," Mr. Richman?

A. Well, I got out of all court work, and it was confined to what matters I could handle, or, could be handled in my office, without requiring court appearances.

Q. What type of matters did you handle in your office?

A. Oh, lease work, drawing corporations, contracts.

Q. Who were among your clients?

A. For what period of time?

Q. During 1945, '46, when you say the Trust began, until 1954.

A. Well, I couldn't give you a list of my clients, without going over my books and records, to see who they were at the time. And I think, also, that is probably a privileged matter as between attorney and client.

Q. I am not asking for any communications that you had [315] with your clients, Mr. Richman. I am just asking you whether you did not represent some more clients during that period.

Mr. Enright: To which objection is made on the ground it calls for confidential matters. Thackery vs. Superior Court, Supreme Court decision, holding that the name of a client is confidential matter.

The Court: Objection sustained.

Q. (By Mr. Whyte): Mr. Richman, I call your attention to the Order appointing the Receiver in this proceeding, which was filed November 30, 1953.

(Testimony of Frederick I. Richman.)

Was a copy of that Order served upon you, sir?

A. Yes, it was; copy that belonged to the court. I had never been served and I was up in court, I believe, December 4th, and brought the point up, and Judge Tolin directed that one of the court's copies be served on me that day.

I had left word with you and Mr. Hallberg, and the managers, to please come into my office and see me, that I would take service. It was in court I was served on about the 4th of December.

Q. You read over this Order, did you not, following its service upon you in court on or about December 4th? A. Yes.

Q. I ask whether or not you noticed the paragraph on the third page of the Order commencing at line 5: [316]

"It is further ordered that Plaintiff Lyda Tidwell and her attorney and the defendants and their attorneys, and all other persons and each of them, be enjoined, and they are hereby restrained from disturbing possession of said Receiver or in any manner molesting the said Receiver of the said property, or interfering directly or indirectly with the administration of the receivership." [317]

You read over that language, did you?

A. I did.

Q. Following your reading of that language sometime on or shortly after December 4th, do you recollect having had any conversations with Mr. Harrison, who was acting as a bookkeeper for Mr. Hallberg?

(Testimony of Frederick I. Richman.)

A. I had a conversation, the first conversation—well, I had a conversation just at Christmastime. He called me to wish me a Merry Christmas, and I reciprocated. The other conversation was, I believe, the 29th of January, 1954.

Q. Did you call Mr. Harrison on that occasion?

A. I did.

Q. Did you go out to see Mr. Harrison?

A. I called, endeavored to call Mr. Hallberg. I endeavored to call you, Mr. Whyte, and I couldn't get you.

I called Mr. Harrison. I went out and saw Mr. Harrison on January 30, 1954.

Q. You talked to him at that time with reference to the administration of the receivership under Mr. Hallberg's guidance?

A. I talked with him at that time relative to the criminal complaint that was filed and the warrant out for me on the Oliver Cromwell incinerator matter.

Q. Yes. Are those the only conversations which you recollect having with Mr. Harrison during the period of Mr. [318] Hallberg's receivership?

A. No, I had other conversations with Mr. Harrison, after he was no longer in the employ of Mr. Hallberg.

Q. But the only two conversations you recollect at the time Mr. Harrison was in Mr. Hallberg's employ were the one he called you at Christmastime and the one where you called him on or about the last day of January and went out to see him at the apartment?

(Testimony of Frederick I. Richman.)

A. I think I had a conversation with him in the early part of February. He was interested in knowing how the court proceeding came out and what was going to happen. I called him and reported to him on that. I mean, that is the criminal proceeding at the Lincoln Heights jail.

Q. You called him and reported to him in regard to those proceedings?

A. It is my recollection I did, yes.

Q. Mr. Richman, it is true, is it not, that, we will say, during the period of the year immediately preceding December 1, 1953, while you were the operating head of the former Richman Trust, that you received compensation equivalent to ten per cent of the gross receipts from those properties?

Mr. Enright: To which objection is made on the ground it is incompetent, irrelevant and immaterial, because what he received as a one-half owner, a trustor-trustee beneficiary [319] agent, is in no manner comparable to or in any manner related to fees to be paid to a receiver. His particular qualifications make an entirely different rule applicable.

The Court: What he received as an owner would not be material. What he received as compensation for like services to those required to be performed by the Receiver, I think, would be proper.

Now, let's have the question and see if it is sufficiently narrow.

(The question was read.)

The Court: Overruled.

The Witness: My compensation was governed as

(Testimony of Frederick I. Richman.)

provided by the trust agreement, which my recollection is ten per cent of the gross income, exclusive of capital items.

Q. (By Mr. Whyte): During the period when you were serving as the operating head of the Richman Trust, did you have managers at the various apartment houses? A. I did.

Q. Under your direction and control?

A. There were managers at all the buildings, and as agent for the trustees they were under the control of the agent.

Q. Did you have a bookkeeper, either in your office or at one of the apartment houses, who kept the books for the trust operations? [320]

A. I want to answer your question correctly. There was no bookkeeper, as such, belonging to the Trust.

I had a secretary and a bookkeeper. I have always had what they call a combination help in the office, secretary and bookkeeper. And my secretary and bookkeeper kept the books of the Richman Trust. The Richman Trust never had a bookkeeper on its payroll.

The Court: Who paid the secretary?

The Witness: I paid the secretary out of mine. I paid the salary, all presents, all bonuses, the Social Security, unemployment on the secretary's salary, compensation insurance and other items.

The Court: That secretary was an employee of—

The Witness: Frederick I. Richman.

(Testimony of Frederick I. Richman.)

The Court: —Frederick I. Richman, rather than of the Richman Trust?

The Witness: That is right. There was never a charge for any overhead of any kind to Richman Trust.

The Court: Were the managers of the apartment houses employees of Frederick I. Richman or employees of Richman Trust?

The Witness: They were employees of Richman Trust.

Q. (By Mr. Whyte): What duties did your secretary in the office perform, other than those connected with the Richman Trust? [321]

A. Secretary to me. Take my dictation, do my typing, keep my personal books, keep my clients' account books, and there were about four or five other sets of books in the office that my secretary kept, as well as keeping the Richman Trust books.

My secretary got out the Richman Trust payroll, took off the monthly statements and typed them up, of the Richman Trust, and did whatever had to be done in the office.

Q. So that when you say that you paid your secretary out of your own pocket, you were paying him, not only for the work he did in connection with the Richman Trust, but for taking your dictation, typing your letters, keeping other books, looking after other clients in your office, is that correct?

A. That is correct. There was not enough work

(Testimony of Frederick I. Richman.)

in the Richman Trust to keep a full-time book-keeper busy or a secretary busy.

Q. Who picked up the rents at the apartment houses during the time you were operating head of the Richman Trust?

A. I generally did it. On occasions my secretary did it.

Q. By your secretary you are referring to Mr. Harrison?

A. I am referring to Mr. Harrison. I am referring to Miss Bowman, when she was my secretary, and Mr. Steiner, when he was my secretary, Mr. Schulberg, or whoever happened to be [322] my secretary at the time.

Q. Did your wife ever assist you in connection with the management of the five apartment buildings, Mr. Richman?

A. My wife assisted me to a certain extent, in being there when painters, upholsterers, and carpet men were there, to pick out color schemes and combinations, and on occasions to set up the units after the work had been done.

Q. Did she receive any compensation for that?

A. She did not. In fact, on those days she accompanied me I bought her lunch for her and never charged the Trust for it.

Q. You are familiar, I am sure, Mr. Richman, with the trust deed on the Oliver Cromwell upon which monthly payments were made? Are you familiar with that trust deed?

A. I know there was such a trust deed.

(Testimony of Frederick I. Richman.)

Q. During your regime as trustee you made payments on accounts of that trust deed, did you not?

A. I did.

Q. When did those payments fall due, Mr. Richman?

A. 1st of the month.

Q. Did you ever make any payments on accounts of that trust deed before the 1st of the month?

A. The records would be the best evidence of that. My recollection is on a few occasions I did, but generally they were made between the 1st and the 5th of the month. The [323] reason for that being the payroll was generally dated the last day of the month and was gotten out on the 1st day of the succeeding month.

As soon as the payroll was out of the way, why, then we could proceed to date the date of the checks for the month and it would be around sometime from the 2nd to the 5th, generally.

Q. You recollect, do you not, Mr. Richman, that Mr. Hallberg and I came to your offices on or about December 3rd and you were kind enough to spend several hours with us, in connection with Mr. Harrison, whom I think was present, too, explaining the nature of the assets and properties, some of the problems connected with their management? You recall that conversation, do you not?

A. I do. I am not too sure of the date, but it was in that time.

Q. You recollect that you told us that you would turn over as promptly as you could all of the files,

(Testimony of Frederick I. Richman.)

the trust deeds and original papers which you had in your possession pertaining to the Trust.

A. I did.

Q. You turned over those files, for the most part, in December of 1953, is that not true?

A. Mr. Hallberg was desirous of obtaining the papers. My recollection is that on the day you were there that he [324] took out the envelopes representing the title instruments covering the properties and signed a receipt that day.

The next day I drew up the set of the current working files. And then on Saturday the 5th of December, Mr. Hallberg came down and picked up the current files. They were in one filing case of mine, which I loaned to Mr. Hallberg, to keep them in, to use along with a key to it. I might add the filing case has been returned, but the key has not been returned yet.

About two weeks later, on a Friday, Mr. Hallberg called me and wanted to know if he could pick up the old files—we will call them dead files—of transactions that had been closed of Richman Trust, and wanted to pick them up on a Saturday.

I informed him that it would take some time to draw the receipt. He suggested that he would send Mr. Harrison down.

At that time I had not been able to replace my secretary-bookkeeper, and I had no one in the office. He suggested that he send Mr. Harrison down early Saturday morning to work on the receipts, and have

(Testimony of Frederick I. Richman.)

the receipts ready by the time he got in from Corona del Mar, which was done.

They were worked up and he receipted for them on Saturday, I believe, the 18th, or sometime in there, of December; whenever it was a Saturday. He had me down working on a Saturday. [325]

I told him I didn't particularly want to do it. It was near Christmastime and I was busy, but he said that he wanted the records so that he couldn't be criticized by the court and he had better pick them up on Saturday. I didn't know that he was working for the County of Orange and that was his only free time at that time.

Mr. Whyte: I move that be stricken as not responsive to the question, the last sentence.

The Court: Motion granted.

The Witness: He took out the files. I told him when they went out that I thought I had turned over everything to him, that the matter had been involved in litigation for almost two years and the files had been up in court and opened up, and were here and there, but to the best of my knowledge I turned everything over to him.

But that if I found anything else at any time in the future, that I would immediately transmit them to you. So he loaded them in the car and drove away.

Q. (By Mr. Whyte): Sometime in January or February you found the file in your office with respect to the parapet at the Oliver Cromwell, did you, Mr. Richman?

(Testimony of Frederick I. Richman.)

A. I don't want to use the word "file." The correspondence regarding the Oliver—or, the parapet at the Canterbury was only about four or five letters. They were lying on top of my desk in a stack that, for my purposes, I [326] label in my mind as current, but not pressing, awaiting future correspondence before action has to be taken.

I didn't want to send that document and other documents like it back to my filing system, to be put in a file in a cabinet and be lost and forgotten about. So they are kept on top of my desk.

Whenever it was, and I think it was the latter part of—I was awaiting a further letter from the Building and Safety Department. This pile stays on top of my desk and it is never touched. Whatever the date of the letter was, that was received from the Building Department, I immediately dug out the other papers and clipped them together and wrote the letter and sent them out to Mr. Hallberg; whatever the date was.

But there was only about five or six letters in the matter. It was not a regular Manila file, such as the other files were, as he had picked up previously, and was never kept in the filing cases.

Q. I believe you told us previously that your compensation as the operating head of the assets and properties constituting the former Richman Trust amounted to ten per cent of the gross receipts. Does that include legal services which you performed for the former Richman Trust?

A. Yes.

(Testimony of Frederick I. Richman.)

Q. By that do you mean that any legal services which [327] you performed for the Trust were included within the ten per cent gross receipts which you received? A. Yes.

Q. You made no further charge of any kind for your legal services, in connection with the administration of the affairs of the former Richman Trust? A. That is correct.

Mr. Whyte: No further examination at this time, your Honor. * * * * * [328]

Los Angeles, Monday, May 17, 1954, 1:30 p.m.

The Court: We will have to take one or two interruptions, which I don't think will be very long this afternoon, but we will have to do it in order to get this matter done today.

You may proceed.

Mr. Whyte: Inasmuch as Mrs. Kennedy, the former manager of the Western Arms Apartment Hotel, will not be here until 2:00 o'clock, I will proceed to put on the case with reference to fees to the attorneys for the Receiver.

In that connection I should like to take the stand myself, to testify briefly. My expert witness is in Referee Hunt's courtroom on the third floor. I will request one of my clients to go up and get him so that no time will be lost.

The Court: Well, if you outline what you have done, the court is always supposed to be a judge of the fees. You can call an expert if you wish, but I am going to fix the fees in accordance with the

work you have done. If you want to enumerate that, I think it will suffice.

Mr. Whyte: Whatever your Honor's pleasure is, I wanted to build a record here which would be adequate for all purposes, and if you would like to have the expert we can bring him down. If you prefer not to have him——

The Court: It is entirely up to you, whether you want [331] to have him or not. You might be happier in your own mind if you do.

Mr. Whyte: Very well.

The Court: We will take a few minutes for this other case.

(Other court matters heard.)

The Court: We will return to the Tidwell case.

Mr. Whyte: I would like to call myself as a witness, if I may take the stand, please.

The Court: All right.

JOHN WHYTE

called on behalf of the Receiver, first being duly sworn, testified as follows:

Direct Examination

The Clerk: State your name, please.

The Witness: John Whyte. First, I had better state, for the record, that I have performed each and all of these services enumerated in my original "Petition for Allowance of Fees to Attorneys for Receiver" filed herein on March 18, 1954, contained in Paragraph 7 thereof.

(Testimony of John Whyte.)

That Petition has been verified by me and I do hereby affirm that I have performed each and all of those services.

I further affirm that my partner, Richard Fitz-Patrick, devoted a very few hours to this matter. The great bulk of the work has been done by me, so that I will refer to myself [332] as the attorney for the Receiver.

I further affirm that I have performed each and all the services enumerated in Paragraph 3 of the "Supplemental Petition for Allowance of Fees to Attorneys for Receiver", filed herein on the first day of this hearing.

Those two Petitions cover a period during which services were rendered commencing on November 30, 1953, up to and including May 10, 1954, which is the last date upon which services were performed, as specified in the Supplemental Petition.

It is further my testimony that on May 11, 1954, I performed the following services, to which I devoted a total of five hours:

"Telephone call from Hallberg re evidence to be presented at hearing on May 12th. Figuring out breakdown of hours of attorney's time for inclusion in Supplemental Petition for fees to attorneys for Receiver.

"Studying Hallberg's deposition. Conference with Jefferson Mann, in preparation for his direct testimony as to reasonable value of Hallberg's services.

"Dictating and revising draft of hypothetical

(Testimony of John Whyte.)

question for Mr. Mann, the expert witness, as to the value of the Receiver's services."

As the court knows, I have been engaged in defending the [333] Receiver against the objections filed herein by defendant Richman to the Receiver's Report and Petition for fees during the course of this hearing, which has continued for, between two and three full court days.

I wish to testify further concerning the following matters:

Contrary to the Receiver's possible misapprehension, I was not advised of the January 13, 1954 notice, warning notice, received with reference to smoke issuing from the Oliver Cromwell.

With regard to the conversation——

Mr. Enright: Just a moment. I move to strike the witness' statement this was a warning notice. It was, in fact, a citation from the Authority.

The Witness: I will let the document speak for itself.

Mr. Enright: Then I move to strike your words as a conclusion on your part.

The Court: The words "warning notice" will be stricken.

The Witness: May the record show I am referring to the notice dated January 13, 1954?

The Court: Is it in evidence?

The Witness: I am not sure. Do you have the file, Mr. Richman?

Mr. Enright: Yes, it is here. No objection to reading it in the record or using it as an exhibit.

(Testimony of John Whyte.)

The Witness: Merely that it specifies what this document [334] is. It is a notice dated January 13, 1954, directed to the Oliver Cromwell Apartment Hotel:

“You are hereby charged with violating Section 24242 of the Health & Safety Code of the State of California by discharging smoke in excess of that allowed from chute fed incinerator.”

Perhaps before I forget it, this would be a good time for me to offer in evidence the whole of my deposition, which has been taken in this cause.

Mr. Enright: To which objection is made on the ground the witness is here available to testify. The deposition was merely taken as an aid in discovery. He can testify.

The Court: I think under Rule 26 it is admissible, isn't it, Mr. Enright?

Mr. Enright: I suppose within the discretion of the court. But I think it is perfectly clear that this witness, being an attorney at law, should be able to testify as to what services he rendered.

The Court: Well, we will look primarily to his deposition. The Rule allows the testimony in. Hence it is admitted.

The Witness: With reference to the conversation had with Judge Tolin on the evening of March 7th, that being a Sunday, March 7, 1954, I can state the following:

I was present in Mr. Hallberg's home at Corona Del Mar. After dinner Mr. and Mrs. Hallberg and myself discussed the [335] problem which had

(Testimony of John Whyte.)

arisen in regard to services rendered or materials delivered to the receivership during the month of February 1954, where the creditors' bills or statements were not received until after March 1. We were concerned as to whether or not those bills should be paid following March 1, when the Order entered by this court on February 28th had purported to terminate the Receiver's active duties of management as of 5:00 o'clock p.m. on February 28th.

Mr. Hallberg telephoned Judge Tolin in my presence and put the problem to him. I then came on the phone.

I mentioned to Judge Tolin that we had this problem concerning bills covering materials furnished or services performed during February of 1954, where the actual statement was not received until on or after March 1.

I explained that I had contacted the attorneys for the plaintiff and the defendant, and that Mr. Enright was opposed to the Receiver paying those bills, and that Mr. Camusi was agreeable that they should be paid by the Receiver.

Judge Tolin then and there instructed me to pay those bills, that is, that the Receiver should pay those bills and those payments are evidenced by the schedule which is attached to the Receiver's report herein.

I further desire to testify concerning the inability of Air Pollution Control, Inc. to install the incinerator equipment at the incinerators at the

(Testimony of John Whyte.)

Oliver Cromwell and the [336] Canterbury Apartment Hotels.

Mr. Enright: May I move to strike the word "inability" and may I request that the witness testify only to those matters he knows of his own knowledge, rather than hearsay?

The Court: Motion granted.

The Witness: I note from my time slip of February 3, 1954, that I made a notation of a telephone conversation with Mr. Tow of Air Pollution Control District re conference with City Attorney and inability of Oxyaire to perform their contract at Canterbury.

Mr. Enright: I move to strike the statement and the notation as being hearsay. So far as Richman is concerned, it all arose after the criminal citation.

The Court: May I have it read, please?

(The answer was read.)

The Court: Motion denied.

The Witness: In that connection I recall that I had a telephone conversation with Mr. Manalis on or about that date, during which I was advised——

Mr. Enright: Just a moment. I object to what he was advised as being oral hearsay. If the mere fact he spent his time in having a conversation may be a basis for compensation, that is one thing, but what Mr. Manalis told him is certainly hearsay.

The Court: It certainly would be hearsay on establishing [337] the fact. It would not be hearsay

(Testimony of John Whyte.)

on establishing the quality of conversation had between the two. Objection overruled.

Mr. Enright: "Quality" did I hear your Honor say?

The Court: Yes. I mean the kind and type of thing with which he was called upon to deal as an attorney.

Mr. Enright: Very well.

The Court: I am not appraising it as to good, bad or poor.

The Witness: Mr. Manalis stated, in substance, that a particular metal used in the dampers, which were to be installed in the incinerators at the Oliver Cromwell and Canterbury, was in short supply. That they did not have enough of that metal to put in the incinerator equipment promptly.

With that in mind, I called Mr. Tow, as I have so stated, from the reference to my time sheet.

Mr. Tow asked me to write him a letter, he being—Mr. Tow telling me he was concerned about the possibility that Oxyaire might not be able to get this incinerator equipment installed properly.

I then wrote a letter to Mr. Tow dated February 4, 1954, if counsel would like to see it.

Mr. Enright: I have seen it. Go ahead.

The Witness: Perhaps the easiest way would be to read it into the record, since I have only my office copy. It is [338] dated February 4, 1954.

(Testimony of John Whyte.)

“Air Pollution Control District, 5201 South San Pedro, Vernon, California

“Attention Mr. Tow

“Gentlemen:

“Following my telephone conversation with your Mr. Tow yesterday afternoon regarding the installation of Oxyaire, by Oxyaire of smog control equipment in incinerators located at the Oliver Cromwell Apartment Hotel, 418 South Normandie, Los Angeles, and the Canterbury Apartment Hotel, 1746 Cherokee, Hollywood, I discussed the matter over the telephone with Mr. Manalis, one of the officers of the Oxyaire.

“Mr. Manalis informed me that his company had not on hand sufficient material to install such incinerator equipment, which is in somewhat short supply throughout the country. Mr. Manalis further stated that his company would commence the work of installment at the Oliver Cromwell on Monday morning, February 8th, and the Canterbury a few days later. He estimated it would take two to three weeks to complete the installation.

“I trust this information will be helpful to you.

“Yours truly,

“John Whyte, Attorney for Roy E. Hallberg, Receiver for Assets of the former Richman Trust.” [339]

That information from Mr. Manalis, that there

(Testimony of John Whyte.)

was now on hand sufficient material of this heat resistant type metal to make the installation, reflected a change in his statement to me, which was made within the previous 24 hours, I believe.

Also, in reference to the reason why the Receiver's report was not filed within the normal time—was not filed as soon as it was contemplated, reference to my time slip for January 29, 1954, states:

“I had a telephone conversation with Judge Tolin re Receiver's first report. The judge decided to modify Rule 18(b)——”

that is, the local rules, Southern District of California,

“——and postpone filing report until March 20, 1954, so that it might cover a full three-month period.”

In regard to the date upon which Mr. Harrison was discharged from the Receiver's employ, this testimony has reference to the statement made by Mrs. Kennedy that she talked to Mr. Harrison on either the 17th and 18th or the 18th and 19th of February, and was informed by him that Mr. Hallberg could not be found.

I believe Mrs. Kennedy stated that was a call to the office at the Oliver Cromwell, where she reached Mr. Harrison, so she said.

My time slip for February 12, 1954, records the following notation: [340]

“Telephone call from Harrison re his discharge by Hallberg.”

You may cross examine, Mr. Enright.

(Testimony of John Whyte.)

Cross Examination

Q. (By Mr. Enright): Now, with reference to Mrs. Kennedy, she did testify she called the office of Mr. Hallberg at the Oliver Cromwell, didn't she? A. Yes, I so understood her.

Q. On cross examination you asked the leading question, did she talk to Mr. Harrison? She answered she thought she did, is that right?

A. She didn't testify she thought she did. She stated positively she did.

Q. The man at the office. Will you refer to your time sheets? A. (Witness complies.)

Q. You have them in front of you?

A. I do.

Q. You are seeking compensation for having expended approximately 93 hours, that is, the hours in support of your Petition, original Petition?

A. The time set forth in the original Petition is approximately 91 hours. The time set forth in the Supplemental Petition, with reference to the services performed in connection [341] with the administration of the business and affairs of the former Richman Trust, is 8.7 hours.

Q. Now, as I understand it——

A. That excludes the services I have rendered in connection with defending the Receiver and his attorneys against the objections filed by defendant Richman.

Q. As I understand your position, it is this, Mr. Whyte: For your services to the Receiver, up to the time you filed your Petition, you have approxi-

(Testimony of John Whyte.)

mately 92 hours and you desire to be paid \$3,000.00, is that right?

A. I have specified, I believe, in my Petition, my original Petition specified a figure of \$3,000.00 for the ordinary legal services heretofore necessarily performed from and after November 30, 1953, to and including March 17, 1954, together with such further sum as the court may in its discretion determine to be a reasonable attorney's fee for the ordinary legal services performed during that period.

Q. Will you please answer yes or no? You want \$3,000.00 for your ordinary services, is that correct?

A. That is correct.

Q. And you want an additional sum to be fixed by the court for extraordinary services?

A. If we are speaking of the period between November 30, 1953, and March 17, 1954, I do. I think the service rendered in connection with the defense of the criminal [342] citation in re smog matter is an extraordinary service.

Q. And for the ordinary services you would desire to be paid in excess of \$30.00 an hour for your time expended, is that correct?

A. I think it figures out to just about \$30.00 per hour.

Q. That is, 90 into \$3,000.00, it is more than \$30.00 an hour.

Now, directing your attention to your time sheets, you expended 2.1 hours on November 30th. That is before your appointment, is that right?

(Testimony of John Whyte.)

A. That is true.

Q. You expended six hours on December 1st, is that correct? A. Correct.

Q. That was before your appointment?

A. Yes. I was not formally appointed until the 2nd.

Q. And on December 1st you feel you were rendering legal services when you went with the Receiver to the Union Bank and visited the apartment houses?

A. I do. My presence at the Union Bank—you are asking for my belief and my opinion—my presence at the Union Bank was necessitated because we had a legal matter of transferring the old account in Mr. Richman's name to a new account in Mr. Hallberg's name as Receiver. [343]

I, in fact, wrote out for the bank officials exactly the language which I wanted on that account.

In so far as the visits to the apartment house managers is concerned, Mr. Hallberg requested I go with him, meet them and explain the change in the legal situation which had taken place as a result of his appointment as Receiver.

Q. He hadn't been yet appointed, had he? There had been no order appointing him yet?

A. The order appointing Mr. Hallberg Receiver was filed herein on November 30th.

Q. That is the decision of the court to appoint, isn't that right, Mr. Whyte? Could you answer that yes or no?

A. If I may refer to my file, please.

(Testimony of John Whyte.)

Q. Yes.

A. My office file contains the following document:

The caption, "Order Appointing Receiver," with the Clerk's filing stamp November 30, 1953, on it.

This is the Order whereby Mr. Hallberg is appointed Receiver of all the real and personal property constituting the former Richman Trust.

Q. Had he qualified at that time?

A. I beg your pardon?

Q. Had he qualified and filed his oath on December 1st?

A. No, I do not think his bond was filed until the 2nd of December. [344]

Q. So he wasn't qualified to act until his bond had been filed and his oath had been filed, isn't that right, Mr. Whyte? You knew that, didn't you?

A. I can't answer that. That is a legal conclusion, whether he was qualified to act.

Q. Before he filed his oath you were his attorney and participated in his filing his oath and filing his bond, didn't you?

A. Yes, I participated in filing his bond.

Q. That was on December 2nd, wasn't it?

A. Yes.

Q. Before you had done that, you went to the apartment houses with Mr. Hallberg and legally advised those managers to turn over the money to Mr. Hallberg, didn't you?

(Testimony of John Whyte.)

A. In only one instance was any money turned over to us.

The Court: That wasn't the question. The question was whether you went and advised managers to turn over money?

The Witness: I believe we did.

The Court: On what authority, since he had not qualified as Receiver?

The Witness: As I view it at this time, I think the authority was probably erroneous, your Honor.

Q. (By Mr. Enright): You want to be paid six hours at \$30.00 an hour for that erroneous advice, don't you? [345]

A. If that six hours is erroneous advice, and bear in mind some of that six hours was for work performed at the Union Bank, which I have just mentioned, then the court is at liberty to disregard it.

Q. Now, just what authority did you have to go to the Union Bank or Mr. Hallberg on December 1st and tell the Union Bank——

The Court: He has answered that he didn't have any.

Mr. Enright: Very well, then.

Q. (By Mr. Enright): So the same would be true about your services at Union Bank that day?

A. May I explain my answer, please? We were faced with the practical situation that there were checks which had been written by Mr. Richman, which were outstanding. Some distribution had to

(Testimony of John Whyte.)

be made of the bank account immediately, in order that those checks could be handled.

I felt that that account matter should be taken care of at once, and I would do it again if I were in the same position.

The Court: Wouldn't it be better to rush up here with the bond for the Receiver and get him qualified first?

The Witness: We had a little difficulty getting the bond, your Honor. There were several conversations with the—if you will permit me to get my time slips——

Q. (By Mr. Enright): Please read your time slip of December 2nd about getting qualified. [346]

A. I will be glad to. The time slip for December 2nd—this is Mr. FitzPatrick's time slip—"Hallberg came in at 9:00 a.m. re his bond as Receiver. I telephoned Hecht at F & D. He said that he had been asked last night by Richman to put up a supersedeas bond on appeal. That if a writ of supersedeas were issued we might not be able to collect the premium on our bonds out of the assets of the receivership.

"He therefore wanted to wait until the issuance of the bond, to see if a supersedeas were issued. I reported this to Mr. Hallberg. We agreed to wait one hour.

"After a while Hallberg suggested that he talk to Judge Tolin's secretary. He called her, but got Judge Tolin, who said to get the bond in right

(Testimony of John Whyte.)

away and he would see that the premium was paid out of the receivership assets.

"I phoned Hecht and told him that if he weren't able to issue the bond we would get it elsewhere. He then asked if it was O.K. for him to telephone Judge Tolin and I said yes.

"He called back in a few minutes and said he would issue the bond. I gave him the title of the court and cause, and Hallberg went over to his office to get the bond. Whyte came in and I reported to him what had happened."

Q. That is the services rendered that day, is that correct, by your associate, Mr. FitzPatrick?

A. Yes. [347]

Q. Now, concerning your extraordinary fees that you desire to be paid, will you refer to your December 27th time sheet? A. Gladly.

Q. You spent .3 of an hour on that day, did you not? A. I did.

Q. And the .3 of an hour was expended upon the smog control contracts that later resulted in the criminal citation, isn't that right?

A. My sheet shows, "Examination of files with reference to installation of incinerator equipment for Canterbury and Oliver Cromwell and liability of Receiver to carry out contracts for such installation."

Q. You advised Mr. Hallberg that he should carry out the contract as a result of your having expended that .3 of an hour?

A. I did, sir. I advised him the contracts were

(Testimony of John Whyte.)

valid and binding, that they should be carried out. That the balance of the purchase price, which I think was 90 per cent, was not to be paid until after the installation had been performed and work approved by the Air Pollution Control District.

Q. Then you wrote a letter of transmittal on December 31st, transmitting the smog control file back to Mr. Hallberg? That is all there in the letter, isn't it?

A. My office copy is dated December 30, 1953, addressed [348] to Mr. Roy E. Hallberg at the Oliver Cromwell Apartment Hotel.

"Dear Roy:

"I am returning herewith the files covering the installation of incinerator equipment at both the Canterbury and the Oliver Cromwell apartment buildings."

Q. The next event, so far as your rendering extraordinary services, was on January 27, 1954, you received a telephone call from Mr. Harrison or someone that the citation, the criminal complaint had been filed January 27th?

A. I believe that is correct, Mr. Enright.

Q. That was .2 of an hour on that criminal citation and other matters on that date, isn't that right?

A. Yes. My time slips for January 27th show .2 of an hour, "Telephone call from Harrison re problems involved in preparing Receiver's first report. Also criminal citation for alleged violation of smog regulations."

(Testimony of John Whyte.)

Q. It wasn't until January 29th that you phoned Mr. Richman that he was named as a defendant in that criminal complaint, was it?

A. I don't believe I knew on the 27th that Mr. Richman was a defendant in the criminal complaint.

Q. But you did phone him on the 29th?

A. I phoned his office and left word at some time between 4:30 and 5:00 o'clock in the afternoon. [349]

Q. On February 1st you appeared in criminal court and expended 2.6 hours in handling that appearance, plus other matters, is that right?

A. I expended 2.6 hours on February 1st on a number of matters.

Q. Among the number of matters you attended to was this citation of this return of the criminal complaint?

A. Yes. I made an appearance in Department 30-A, Los Angeles Municipal Court, in re arraignment City of Los Angeles vs. Richman and McConnell.

Q. The total time expended was 2.6 hours?

A. For that and a number of other matters which, I suppose, I had better read into the record.

Q. All right. Go ahead and read from the time sheet for that day.

A. The appearance in Department 30-A I have already noted. The matter was set over until February 23rd at 9:30 a.m.

“Conference with Mr. Tow of Air Pollution Control re case. Telephone call to Harrison urging him

(Testimony of John Whyte.)

to see that Oxyaire gets to work immediately on installation of smog control equipment.

“Telephone from Mrs. Hallberg re result of court hearing. Dictating draft of first report of Receiver and Petition for Instructions and revising the same.” [350]

The Court: Before we proceed further, I have a note that Mr. Laugharn, who has been sitting here for some 15 minutes, has come in from another court to which he wishes to return, and he is a witness here.

Will it be agreeable with whoever wishes to call him, to call him now? We can suspend Mr. Whyte’s further examination until after that is done.

Mr. Enright: So far as I am concerned, yes, sir.

The Witness: Thank you.

(Witness temporarily excused.)

HUBERT F. LAUGHARN

called on behalf of the Receiver, first being duly sworn, testified as follows:

The Clerk: State your full name, please?

The Witness: Hubert F. Laugharn.

Direct Examination

Q. (By Mr. Whyte): Where do you reside, Mr. Laugharn?

A. 620 South Irving Boulevard, Los Angeles, California.

Q. What is your profession, sir?

A. Attorney-at-law.

(Testimony of Hubert F. Laugharn.)

Q. What is the name of your firm?

A. Craig, Weller & Laugharn.

Q. What is your office address?

Mr. Enright: I offer the stipulation that Mr. Laugharn [351] has practiced law in this community for a great period of time. He specializes, I think, in bankruptcy, if that will be of any help, and the general practice of law.

Mr. Whyte: I appreciate your offer to stipulate to the qualifications of the witness, but I will ask a few questions, if I may.

Q. (By Mr. Whyte): Where was your office located? A. Where is it now located?

Q. Yes.

A. 817, 111 West Seventh Street Building, Los Angeles.

Q. In what year were you admitted to the bar in California? A. 1923.

Q. Have you practiced law continuously since that date? A. No, I haven't.

Q. For what period of time did you have other work in this area?

A. From 1941 to 1948 I was Referee in bankruptcy.

Q. Were you appointed Referee in bankruptcy by the judges of this United States District Court for the Southern District of California?

A. Yes, I was.

Q. In what specialty have you engaged in the practice of law, if any?

A. Well, I would say that it has been commer-

(Testimony of Hubert F. Laugharn.)

cial law, [352] bankruptcy, liquidation, out of court settlement of creditor and debtor problems. I think that probably would describe it.

The Court: Mr. Laugharn, Mr. Enright is having trouble hearing you.

The Witness: I am sorry.

The Court: This is a much larger courtroom than the one you have upstairs. It is kind of hard to hear.

The Witness: I am sorry. I would say it was a general, what you would call a firm that has a general practice, probate, commercial law. I don't know that anyone in the firm has ever handled a criminal matter, but I would say general otherwise.

Q. (By Mr. Whyte): Have you ever been appointed a Receiver in any court action?

A. Yes, I have been Receiver in quite a few court matters, trustee.

Q. Have you been appointed a Receiver in the Federal District Court?

A. Yes, on quite a few occasions.

Q. Also in the state courts?

A. Yes, on a number of occasions.

Q. Have you acted as an attorney for a Receiver appointed by either United States District Court or one of the state courts in California?

A. Yes, upon quite a number of occasions. [353]

Q. I direct your attention to the petition, "Petition for Allowance of Fees to Attorneys for Receiver" filed herein March 18, 1954, and ask you whether or not you have examined that document?

(Testimony of Hubert F. Laugharn.)

A. Yes, I have.

Q. I further call your attention to the "Supplemental Petition for Allowance of Fees to Attorneys for Receiver" filed herein on or about the first day of this hearing, and ask whether you have examined that document? A. Yes, I have.

Q. I direct your attention to a copy of the deposition of John Whyte filed herein, and ask you whether or not you have read that deposition?

A. Yes, I have.

Q. I refer you to documents entitled——

A. Just a minute. Could I just——

Q. Of course, Mr. Laugharn.

A. Yes. I knew the deposition I read had a number of corrections in it and I notice some of them here in pen and ink.

Q. I direct your attention to a document filed herein on November 30, 1953, entitled "Order Appointing Receiver", and ask whether or not you could recollect having read that document?

A. Yes, I read this. [354]

Q. I call your attention to a document headed "Petition for Authority to Employ Counsel" filed herein on December 2, 1953, and ask whether or not you have read that document?

A. Yes, I have.

Q. I direct your attention to a document entitled "Petition for Authority to Pay Christmas Bonuses" filed herein on December 18, 1953 and inquire whether or not you have read that document? A. Yes, I have.

(Testimony of Hubert F. Laugharn.)

Q. I next direct your attention to a document entitled "Petition for Authority to Renovate Individual Apartments Located in Five Apartment Houses Included Among Assets of Former Richman Trust" filed herein—I am not certain of the date—and ask whether or not you have read that document? A. Yes, I have.

Q. Next I call your attention to a document entitled "Objections and Answer to Report and Petitions of Receiver and his Attorney for Fees" filed herein on or about April 7, 1954, and ask whether or not you have read that document?

A. Yes, I have.

Q. Mr. Laugharn, please assume the following facts:

John Whyte, the attorney for the Receiver, has been engaged in the active practice of the law in Los Angeles, California, for a period of from 12 to 13 years; [355]

For 10 years he was associated with the office of O'Melveny & Myers, one of the leading firms of attorneys in this city;

On or about December 1, 1953, he was employed as attorney for the Receiver herein and has continued at all times to represent the Receiver;

The Receiver was removed from his active duties of management of the business and affairs of the former Richman Trust on February 28, 1954;

After the Receiver's removal on that date, Mr. Whyte prepared the Receiver's Report and Petition for Allowance of Fees, and in addition he per-

(Testimony of Hubert F. Laugharn.)

formed certain necessary services after February 28, 1954, in connection with the administration of the business and affairs of the former Richman Trust;

Assuming further that Mr. Whyte performed all or substantially all of the services specified in the Petition and Supplemental Petition for Allowance of Fees for Attorney to Receiver, exclusive of services necessarily rendered by him in defending the Receiver and his attorneys against objections filed by defendant Richman to the Report and Petition for Fees of the Receiver and his Attorneys, which said services were performed commencing on or about December 1, 1953, to and including May 10, 1954;

The time devoted by Mr. Whyte to the rendition of said services, excluding services rendered in defending the [356] Receiver and his attorneys against the objections raised by the defendant Richman to the Report and Petition for Fees of the Receiver and his attorneys, has been approximately 100 hours;

The assets of the former Richman Trust, which has been administered by the Receiver, have a fair market value of approximately One Million Two Hundred Thousand Dollars;

On the basis of these facts, what is your opinion as to the reasonable value of such services?

A. Well, in my mind I have divided the problem into two parts.

The first is the representation of the Receiver

(Testimony of Hubert F. Laugharn.)

during his administration and up and through the preparation of his Report and the presentation thereof in securing the discharge of the Receiver in the normal type of case. The period involved was approximately three months; a few days probably short of that.

Considering the size of the problem, the size of the case, the extent of the assets to be administered, the normal problems that were encountered, it would seem to me that a compensation of \$1,000.00 a month would not be excessive; considering all of those elements.

Now, the rest of the problem, including the objections to the Receiver's Report and the contended surcharges——

Q. May I interrupt, Mr. Laugharn, to ask whether I [357] might put a further hypothetical question to you on those services, and then let you answer that just as you see fit. A. Yes.

Q. Please assume the following further facts: After the Receiver was relieved of his active duties of management of the assets of the former Richman Trust on February 28, 1954, the defendant herein, Frederick I. Richman, filed written objections on or about April 7, 1954, to the Report and Petition of the Receiver and his attorneys for these:

Said objections contained charges that the Receiver had performed his services herein in a negligent and incompetent manner with reference to numerous matters;

(Testimony of Hubert F. Laugharn.)

It is further claimed in said objections that by reason of improper performance of his duties the Receiver should be surcharged in an amount of approximately Eight Thousand Dollars;

John Whyte, the attorney for the Receiver, has undertaken the latter's defense against each and all the charges against the Receiver specified in said objections.

In that connection Mr. Whyte has devoted between 16 and 17 hours prior to the commencement of this hearing to the defense of the Receiver against the charges made against him, as set forth in the objections filed herein by defendant Richman;

Such hearing has continued for from two to three full court days; [358]

On the basis of these facts, do you have an opinion as to the reasonable value of Mr. Whyte's services in defending the Receiver against the aforementioned objections filed to the Receiver's Report and Petition for a Fee herein?

A. Well, assuming the elements that you have given, some of which I am not familiar with, the preparation, but assuming that amount of work was necessary and assuming the disposition of the problem did require three court days before the court, it would seem to me that—and assuming a fair degree of success, although I don't know that that would be so terribly important in the attorney's time—I would say that that should involve

(Testimony of Hubert F. Laugharn.)

another amount of from \$350.00 to possibly \$550.00 or \$600.00.

Mr. Whyte: You may cross examine.

Cross Examination

Q. (By Mr. Enright): Mr. Laugharn, I would like to find out how you arrived at this \$350.00 to \$550.00. A. Well,—

Q. May I pursue my question?

A. How I arrived at it?

Q. May I pursue my question a little more?

A. I see.

Q. So I can point out my difficulty.

A. Excuse me. [359]

Q. As I recollect your answer, you said that there were about three days involved on the hearing and, secondly, I assume you took into consideration the statement by Mr. Whyte, in his question, there was surcharges of \$8,000.00. Is that right so far?

A. I took into consideration all of the elements that he requested me to take into consideration.

Q. And then you ascertained approximately three days and arrived at the conclusion of \$350.00 to \$550.00, is that it?

A. Yes, that was my general conclusion.

Q. So that would be at the rate, for three days at \$350.00, a little over a hundred?

A. I was figuring about four hours before the court a day on that basis.

Q. That would be 12 hours altogether for the

(Testimony of Hubert F. Laugharn.)

three days. Now, the thousand dollars a month, I take it you fix that based upon the fact there is \$1,200,000.00 worth of assets?

A. That is one of the elements that I had in mind.

Mr. Enright: I have no further questions.

Mr. Whyte: No further redirect.

The Witness: I know both of the gentlemen in this litigation, if the court please. I was asked to testify and felt it was my duty.

The Court: You don't need to explain. [360]

Mr. Whyte: May I ask one more question?

The Witness: Yes, sir.

Redirect Examination

Q. (By Mr. Whyte): Did I understand your answer to be that on the basis of three full court days devoted to this hearing, that you felt something from \$350.00 to \$550.00 was adequate compensation?

A. That is my opinion, yes, sir.

Q. What additional compensation, if any, do you think should be awarded for time of approximately 16 to 17 hours devoted prior to the hearing to the preparation of the case in defending the Receiver against those objections?

A. I included that period of preparation in my estimate.

Mr. Whyte: Thank you, sir.

Mr. Enright: It would be a total of 16 plus the 12 hours while in court, is that right?

(Testimony of Hubert F. Laugharn.)

The Witness: Yes, that was my theory.

Mr. Enright: 28 hours. That is all.

(Witness excused.) [361]

JOHN WHYTE

called as a witness on behalf of the Receiver, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Enright): Now, Mr. Whyte, you did not advise Mr. Hallberg of the possibility of there being criminal citation issued in the event that smog contract was not performed?

A. No, I don't believe that I did.

Q. I got the impression that the sole reason for not filing the report was because of an order made by this court on January 29th, according to your January 29th notes, isn't that right?

A. I didn't mean to convey the impression that was the sole reason.

Q. As a matter of fact, you spent 1.1 hours on January 19th counseling with Mr. Harrison or somebody in an effort to prepare, commence to prepare the report, in accordance with the court's ruling?

A. What was that date again, Mr. Enright?

Q. January 19th.

A. Yes, I spent 1.1 hours—no. That is a mistake. My time slip for January 19th shows 1.1 hours preparing first report of Receiver and peti-

(Testimony of Maude Kennedy.)

Western Arms, Report from 10-30-1953 to 11-30-1953'', and I will ask you whether you can identify that document?

A. This is the monthly report.

Q. Monthly report of what, Mrs. Kennedy?

A. Of the rental.

Q. Are those reports kept in the regular course of business at the Western Arms Apartment House?

A. They are.

Q. Is that in your handwriting, Mrs. Kennedy?

A. This is.

Q. Those reports are made up at or about the same time as the transactions reflected thereon?

A. In this report, it is made at the end of the month off the ledger.

Q. In your capacity as the manager of the Western Arms, you kept these reports in your custody there at the [361-D] apartment?

A. I kept a copy of these. These were made in duplicate.

Mr. Whyte: I am going to offer this first series of white sheets, all of them being for the period of 10-30-53 to 11-30-53, in evidence as Receiver's Exhibit next in order.

The Court: Received.

The Clerk: Receiver's Exhibit 1.

(The documents referred to were marked Receiver's Exhibit 1 and were received in evidence.)

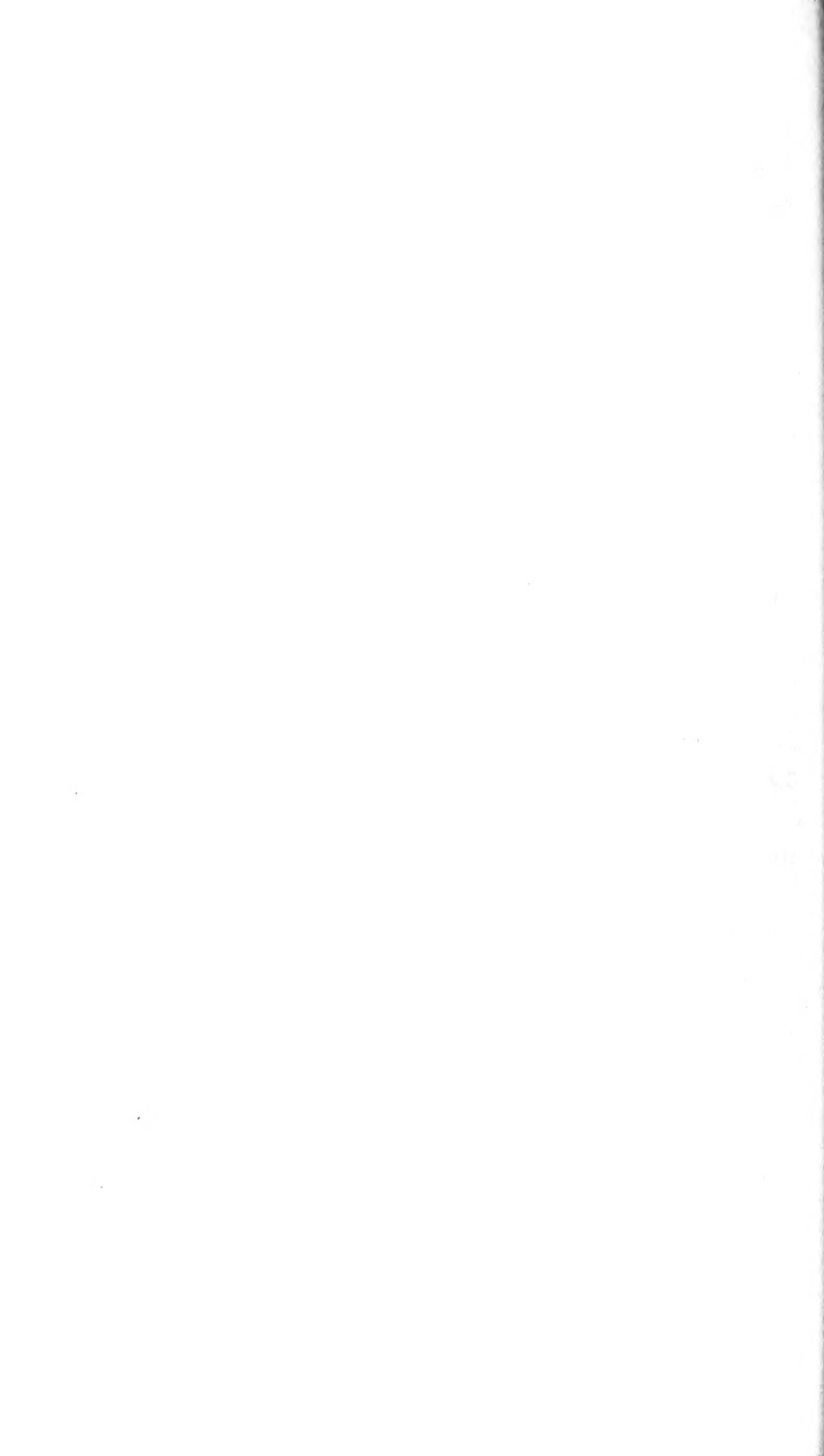
RECEIVER'S EXHIBIT No. 1

CASH and *Western American* REPORT from 10-30-1930 to 10-30-1933

DATE	TENANT'S NAME	Appt. No.	RENTAL PERIOD		CASH RECEIVED			Amount Paid Due	Vacant Rent Schedule	CASH REPORT	
			From	To and Incl.	Rent	Miscellaneous	Total			Cash on Hand	
	<i>Darlington</i>	101	9-0-30	11-8	12-8	90.00	X	90.00	✓	Cash Received	\$
	<i>Morgan</i>	102	8-8-30	11-1	11-2	40.00	✓	40.00	✓	Cash Received	\$
	<i>Morgan</i>	103	6-0-30	11-1	12-1	60.00	✓	60.00	✓	RENTY CASH EXPENDITURES	\$
	<i>Mulderia</i>	104	3-0-30	11-16	11-17	30.00	✓	30.00	✓	Item	Amount
	<i>Morgan</i>	105	5-5-30	11-3	12-3	55.00	✓	55.00	✓		
	<i>Morgan</i>	106	5-5-30	11-1	12-1	55.00	✓	55.00	✓		
	<i>Morgan</i>	107	6-5-30	11-5	12-5	65.00	✓	65.00	✓		
	<i>Morgan</i>	108	6-5-30	11-1	12-1	65.00	✓	65.00	✓		
	<i>Morgan</i>	110	2-0-30	11-1	12-1	20.00	✓	20.00	✓		
	<i>Morgan</i>	112	4-0-30	11-1	12-1	40.00	✓	40.00	✓		
	<i>Morgan</i>	114	6-7-30	11-21	12-21	67.00	✓	67.00	✓		
	<i>Morgan</i>	115	6-0-30	11-20	11-28	16.00	✓	16.00	✓		
	<i>Morgan</i>	116	6-5-30	11-9	12-9	65.00	✓	65.00	✓		
	<i>Morgan</i>	117	8-0-30	11-28	12-28	32.00	✓	32.00	✓		
	<i>Morgan</i>	118	7-0-30	11-1	12-1	70.00	✓	70.00	✓		
	<i>Morgan</i>	119	9-0-30	11-17	-	-	✓	90.00	✓		
	<i>Morgan</i>	119	3-0-30	11-28	12-5	30.00	✓	30.00	✓		
	<i>Morgan</i>	120	6-7-30	11-17	12-17	67.00	✓	67.00	✓		
	<i>Morgan</i>	201	9-0-30	11-1	12-1	90.00	✓	90.00	✓		
	<i>Morgan</i>	202	8-5-30	11-1	12-1	85.00	✓	85.00	✓		
	<i>Morgan</i>	203	6-0-30	11-23	12-23	60.00	✓	60.00	✓		
	<i>Morgan</i>	204	2-2-30	11-14	12-1	22.00	✓	22.00	✓		
	<i>Morgan</i>	204	6-0-30	11-1	12-1	60.00	✓	60.00	✓		
	<i>Morgan</i>	206	5-5-30	11-28	12-28	55.00	✓	55.00	✓		
	TOTALS					\$	\$	\$	\$		
										Total Pettr Cash Expenditures	\$
										Cash Disposed	\$
										Cash Hierwith	\$
										Balance on Hand	\$

Receipts and Requisitions by Supplier

Signed by









(Testimony of Maude Kennedy.)

Q. (By Mr. Whyte): Directing your attention to Receiver's Exhibit 1, I am going to put some questions to you with regard to the number of vacancies at the Western Arms Apartment Hotel as of November 30, 1953.

First, calling your attention to Room 102, Apartment No. 102, are you able to state from this report whether or not that apartment was vacant as of the close of November 1953?

A. Vacant when?

Q. As of November 30, 1953.

A. Well, I wouldn't know without looking at my ledger.

Q. Well, there is a column on this report headed "Rental Period"? A. That is right.

Q. And underneath it is a column "From" and a second [361-E] column "To and incl."

A. That is right.

Q. In that rental period column for Apartment 102 the "From" is November 1, the "To and incl." is November 2.

What does that signify, Mrs. Kennedy?

A. This is right here, this is when it was rented (indicating).

Q. It was rented on November 1st?

A. That is right.

Q. What happened on November 2nd?

A. Well, that must be a mistake in there.

Q. Assuming——

A. She didn't give \$40.00 a day for it.

(Testimony of Maude Kennedy.)

Q. What does the notation in the column "To and incl." show?

A. Well, it shows 1 to 11-2.

Q. What does that mean?

A. That the apartment was rented from the 1st of November to the 2nd of November. From that you would think so.

Q. Now, if the apartment during the period of November was rented only from the 1st of November to the 2nd of November, was the apartment vacant on the 30th of November?

A. It must have been, if it is from the 1st.

Q. Next directing your attention to Apartment No. 104, [361-F] again looking at the column headed "Rental Period", from November 3rd—

A. 16.

Q. I beg your pardon. November 16, "To and incl." November 17.

A. Not including 17th. That was rented for one night, \$3.00.

Q. Was that the only time during the month of November when Apartment 104 was rented?

A. That is right.

Q. For one night?

A. That is right.

Q. Next directing your attention to Room 115, again the column "Rental Period", the sheet shows from 11-20 "To and incl." 11-28.

Does that correctly state the period during that month when the Apartment 115 was rented?

A. Rented for \$16.00 for the week. That is what it says.

(Testimony of Maude Kennedy.)

Q. And the rental period expired on November 28th, is that correct? A. That is right.

Q. Next, calling your attention to Apartment 204, the column "Rental period", from November 14th "To and incl." November 21st. [361-G]

A. That wasn't including the 21st. That was to noon of the 21st.

Q. Does that period from November 14th to November 21st specify the only period during the month of November '53 when that apartment was rented?

A. Well, looking at your next month's sheet, you can find that out.

Q. I am speaking only of the month of November.

A. That is what it says, that is right.

Q. Next, Apartment 301—we will skip that.

Apartment 404, I notice that there is a blank in the column "Rental Period", both the "From" and "To and incl." What does that mean?

A. That means it wasn't rented.

Q. Thank you. I next direct your attention to a series of white sheets bearing the heading "Cash and Western Arms Report from 11-30-53 to 12-31-1953."

With reference to the manner in which those sheets were prepared, would your answers be the same as to these sheets, as to the previous sheets?

A. They certainly would.

Mr. Whyte: I offer as Receiver's Exhibit next

(Testimony of Maude Kennedy.)

in order this series of sheets showing the report from November 30, 1953, to December 31, 1953.

The Court: Admitted. [361-H]

The Clerk: Receiver's Exhibit 2.

(The documents referred to were marked Receiver's Exhibit 2 and were received in evidence.)

RECEIVER'S EXHIBIT No. 2

CASH and *Walter L. Carver* REPORT from *H-30* 1030 12-31 1058

DATE	TENANT'S NAME (FULL, REGULAR, MONTHLY)	Acct. No.	RENTAL PERIOD		CASH RECEIVED		Amount Paid Due	Vacant Rent Schedule	CASH REPORT	
			Rent Rate	From To and Incl	Rent	Microfilm	Total		Cash on Hand	
	<i>Washington</i>	101	18 00	12-8-1-8	18 00		18 00		Cash Received	\$
	<i>Harvey</i>	102	60 00	12-1-1-1	60 00		60 00		Total	\$
	<i>Harvey</i>	103	60 00	12-1-1-1	60 00		60 00		RENTY CASH EXPENDITURES	\$
	<i>Hoffman</i>	104	80 00	12-23-1-6	110 00		110 00		Item	Amount
	<i>Hoffman</i>	105	55 00	12-3-1-3	55 00		55 00			
	<i>Hoffman</i>	106	55 00	12-1-1-1	55 00		55 00			
	<i>Gallego</i>	107	65 00	12-5-1-5	65 00		65 00			
	<i>Gallego</i>	108	65 00	12-1-1-1	65 00		65 00			
	<i>Gallego</i>	110	20 00	12-1-1-1	20 00		20 00			
	<i>Gallego</i>	112	40 00	12-1-1-1	40 00		40 00			
	<i>Gallego</i>	114	67 00	12-1-1-1	67 00		67 00			
	<i>Gallego</i>	115	65 00	12-9-1-6	60 00		60 00			
	<i>Gallego</i>	116	65 00	12-9-1-9	65 00		65 00			
	<i>Gallego</i>	117	80 00	12-20-1-20	80 00		80 00			
	<i>Gallego</i>	118	70 00	12-1-1-1	70 00		70 00			
	<i>Gallego</i>	119	90 00	12-5-12-7	8 00		8 00			
	<i>Gallego</i>	119	90 00	12-16-1-16	90 00		90 00			
	<i>Gallego</i>	120	67 00	12-17-1-17	67 00		67 00			
	<i>Gallego</i>	201	90 00	12-1-1-1	90 00		90 00			
	<i>Gallego</i>	202	85 00	12-1-1-1	85 00		85 00			
	<i>Gallego</i>	203	60 00	12-23-1-23	60 00		60 00			
	<i>Gallego</i>	204	85 00	12-12-1-12	85 00		85 00			
	<i>Gallego</i>	205	60 00	12-1-1-1	60 00		60 00			
	<i>Gallego</i>	206	55 00	12-22-1-22	55 00		55 00			
	TOTALS				1030 00		1030 00			
									Total Payments	\$
									Cash	\$
									Balance on Hand	\$

Receipts and Payments for Sept 44

Signed by



CASH and *Western Union* REPORT from 11 - 30 1930 12 - 31 1930

DATE	TENANT'S NAME	Acct. No.	Rental Rate	RENTAL PERIOD		CASH RECEIVED		Total	Amount Rent Due	Vacant Rent Schedule	CASH REPORT	
				From	To and Incl	Arrears	Rent				Cash on Hand	
	<i>Munger</i>	207	65.00	12-1	1-1		65.00				Cash Received	\$
	<i>Wright</i>	208	60.00	12-5	1-5		60.00				Cash Received	\$
	<i>Wright</i>	309	60.00	12-23	1-23		65.00				Total	\$
	<i>Wright</i>	210	65.00	12-13	1-13		65.00				PETTY CASH EXPENDITURES	
	<i>Burke</i>	211	60.00	12-1	1-1		60.00				Free	Amount
	<i>Mung</i>	212	65.00	12-25	1-25		65.00					
	<i>Wright</i>	214	65.00	12-1	1-1		65.00					
	<i>Wright</i>	215	65.00	12-24	1-24		65.00					
	<i>Wright</i>	216	65.00	12-24	1-24		65.00					
	<i>Wright</i>	217	60.00	12-1	1-1		60.00					
	<i>Wright</i>	218	60.00	12-1	1-1		60.00					
	<i>Wright</i>	219	90.00	12-16	1-2		45.00	40.00				
	<i>Wright</i>	220	67.50	12-9	1-9		67.50					
	<i>Wright</i>	301										
26	<i>Wright</i>	301	90.00	12-27	1-27		90.00	1.50				
	<i>Wright</i>	302	85.00	12-10	1-11		42.50	7.00				
	<i>Wright</i>	303	85.00	11-1	12-1		60.00					
	<i>Wright</i>	304	65.00	12-1	1-1		65.00					
17	<i>Wright</i>	304	80.00	12-2	1-16		40.00					
	<i>Burke</i>	305	60.00	12-11	1-11		60.00					
	<i>Wright</i>	306	60.00	12-5	1-5		60.00					
	<i>Wright</i>	307	65.00	12-1	1-1		65.00					
	<i>Wright</i>	308	60.00	12-1	1-4		60.00					
20	<i>Wright</i>	308	60.00	12-24	1-24		60.00					
63	TOTALS						140.00	16.50				

Receipts and Requisition for Supplies

Signed by

MANAGEMENT AND FINANCE



CASH and *Western* *Arms* REPORT from 11-30 1930 12-31 1930

DATE	TENANT'S NAME	Appt. No.	RENTAL PERIOD		Rent	CASH RECEIVED		Amount Paid Date	Vacant Rent Schedule	CASH REPORT	
			From	To and Incl		Miscellaneous	Total			Cash on Hand	
2	Johnson	308	6-5-10	12-25	1-25	5.00	5.00			Cash Received	\$
	Schmidt	309	6-5-10	12-1	1-1	6.00	6.00			Total	\$
	Bennett	310	6-5-10	12-25	1-25	6.50	6.50			RENTY CASH EXPENDITURES	\$
	Wright	311	6-5-10	12-6	1-6	6.00	6.00			Item	
	Williamson	312	6-5-10	12-1	1-1	6.50	6.50			Amount	
	Maxwell	314	6-5-10	12-1	1-1	6.50	6.50				
3	Johnson	315	6-5-10	12-26	12-27	3.00	3.00				
	Madala	315	6-5-10	12-30	1-30	6.00	6.00				
	Bullock	316	6-5-10	12-1	1-1	6.50	6.50				
	Farley	318	6-5-10	12-18	1-18	6.00	6.00				
	Garland	319	6-5-10	12-1	1-1	9.00	9.00				
	Garland	320	6-7-10	12-23	1-23	6.75	6.75				
31	Garland	317	8-5-10	12-19	1-19	9.00	9.00				
	Garland	401	9-5-10	12-1	1-1	9.00	9.00				
	Garland	402	9-5-10	12-7	1-7	8.50	8.50				
	Garland	403	6-5-10	12-9	1-9	6.50	6.50				
	Garland	404									
	Garland	405	6-5-10	12-25	12-25	6.00	6.00				
36	Garland	405	6-5-10	12-25	1-25	6.00	6.00				
	Garland	406	6-5-10	12-1	1-1	6.00	6.00				
	Garland	406	6-5-10	12-1	1-1	6.00	6.00				
	Garland	407	6-5-10	12-14	1-14	6.50	6.50				
	Garland	408	6-5-10	12-1	1-1	6.50	6.50				
	Garland	409	6-5-10	12-12	1-12	6.00	6.00				
36	Garland	410	6-5-10	12-15	1-15	6.50	6.50				
	TOTALS					146.00	146.00				
Remarks and Requisition for Supplies.											

Remarks and Requisition for Supplies.

Signed by



and Westerns
(DAILY, WEEKLY, MONTHLY)

11-30

31

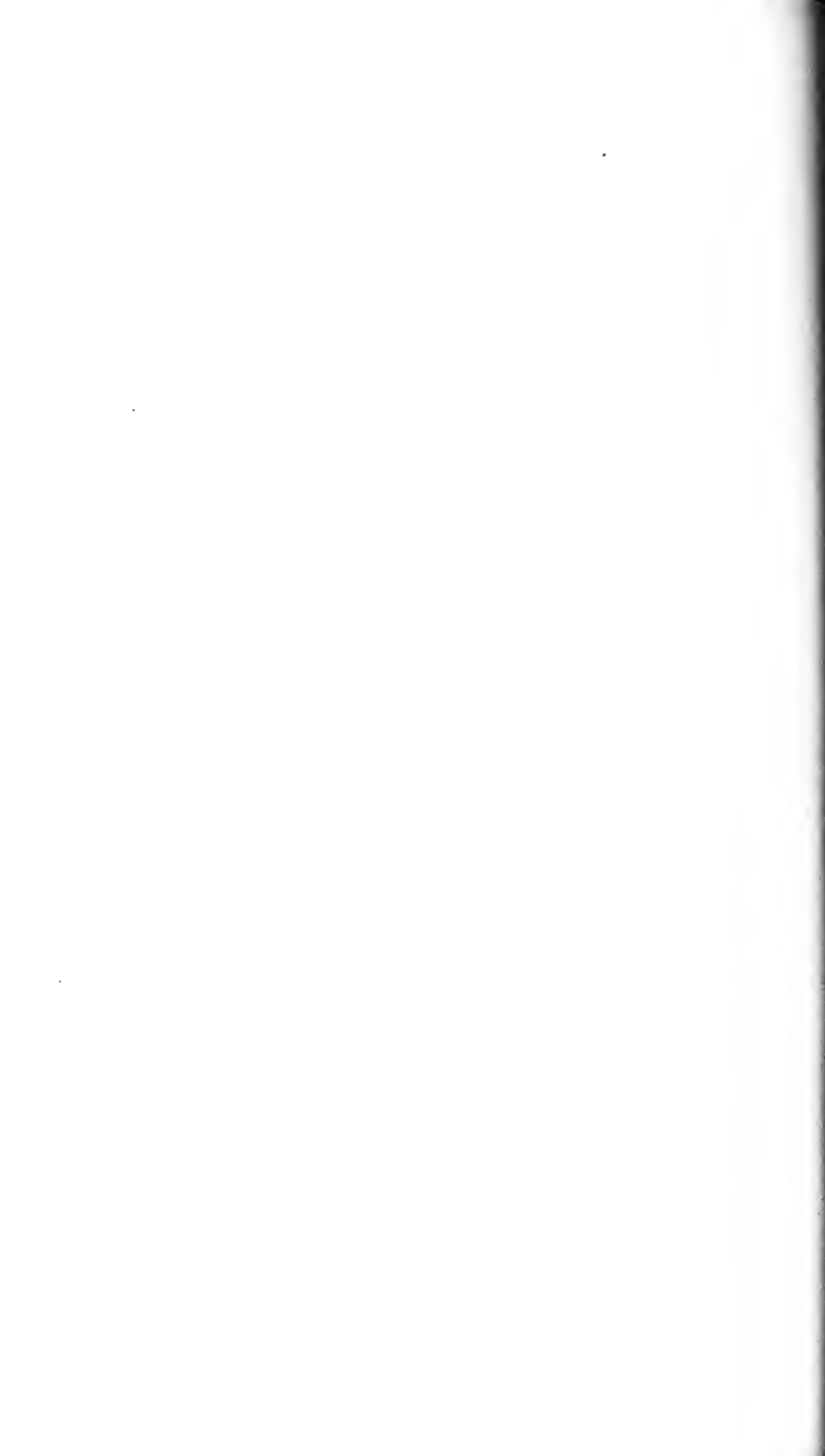
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Remarks and Requisition for Supplies

Signed by _____

Form No 6 Copyright 1937 Apartment Association of Los Angeles County, Inc. DUnkirk 4-4131

Receiver's Exhibit No. 2—(Continued)



(Testimony of Maude Kennedy.)

Q. (By Mr. Whyte): Now, directing your attention to Receiver's Exhibit 2, I am going to put several questions to you with reference to the number of vacant apartments at the Western Arms as of the end of December 1953.

First, I call your attention to Apartment 204, and under the heading "Rental Period", from 12-12 "To and incl." 12-13,—

A. Rented one night for \$4.00.

Q. During the month of December?

A. That is right.

Q. Apartment 304, it shows in the "Rental Period" column, "From" 12-1 "To and incl." 12-15—

A. To 12-15.

Q. Excuse me. Does that correctly delineate the period during the month of December when that apartment was rented?

A. That is right.

Q. I will ask you to examine this sheet for December and see if you can tell me whether any other apartments during that month were vacant as of the end of the month.

A. As of the end of December?

Q. That is right.

A. 404 was vacant. [361-I]

Q. May I look at that with you, please?

A. Yes.

Q. 404, yes.

A. 304 was rented for two weeks.

Q. 304 is the one which you just mentioned in your previous testimony?

A. 304, it was rented for two weeks.

(Testimony of Maude Kennedy.)

Mr. Enright: I have it down as 404, and 301 and 204. This is 304, another apartment, now?

The Witness: No, 304; it was 304.

Mr. Whyte: The witness testified as to 204, 304, and 404.

The Witness: Testified as to what?

Q. (By Mr. Whyte): They were vacant as of the end of the month, is that right?

A. When? Where is it?

Q. Well, let's start again.

A. 204, right there it is (indicating). It was only rented one day.

Q. That is correct. A. One night.

Q. That is what you originally testified.

A. That is right.

Q. You so testified with respect to 304.

A. 304 was rented two weeks. [361-J]

Q. You testified with respect to 404?

A. That was vacant.

Q. Very well. Apart from those three individual apartments, are there any other apartments shown on that sheet which were vacant as of the end of December 1953?

Mr. Enright: Well, I will object. The record will speak for itself, as to what it shows.

The Court: Objection sustained.

Mr. Whyte: Thank you.

Mr. Enright: It also shows a vacancy there during the month, two weeks.

The Court: Before you go to another one, I will give counsel in this case their afternoon recess while

(Testimony of Maude Kennedy.)

we hear a motion which should take about ten minutes.

(Short recess taken.)

Q. (By Mr. Whyte): Mrs. Kennedy, I call your attention to four white sheets headed "Cash Report" or headed "Cash——"

A. Where is "Cash"?

Q. Here (indicating). A. Oh.

Q. ——"from January 1, 1954, to January 31, 1954," with the penciled notation "W.A.", and ask you if you identify that series of documents.

A. That is the monthly report.

Q. With respect to the makeup of that report, would [362] your answers be the same as to this, as they were to the November and December reports for 1953?

A. If the figures show the same, I would.

Q. The reports were prepared, this report was prepared in the same fashion as the December and November 1953 reports? A. That is right.

Mr. Whyte: Thank you.

I offer this as Receiver's Exhibit next in order.

The Court: Admitted.

The Clerk: It will be Receiver's Exhibit 3 in evidence.

(The document referred to was marked Receiver's Exhibit 3 and was received in evidence.)



John D. ...

RECEIVER'S EXHIBIT No. 3

14

CASH and REPORT from 1-1-54 19 60 1-31 1954

DATE	TENANT'S NAME	Acct. No.	RENTAL PERIOD		CASH RECEIVED		Amount Paid Due	Vacant Rent Schedule	CASH REPORT	
			From	To and Incl	Base	Miscellaneous			Cash on Hand	Cash Received
	Marlingstone	101	9/10	1/1	90.00					\$
	Hendey	102	9/20	1/1	95.00					\$
	Frank	103	10/10	1/1	60.00					\$
	Hoffman	104	10/20	1/1	80.00					
	11th	105	5/5	1/1	55.00					
	Waggonman	106	5/5	1/1	55.00					
	Walker	107	6/5	1/1	65.00					
	Marbone	108	6/5	1/1	65.00					
	Byrre	110	20.00	1/1	20.00					
	Kennedy	112	40.00	1/1	40.00					
	Gorkan	114	67.50	1/1	67.50					
	Grigson	115	70.00	1/1	70.00					
	Wade	116	65.00	1/1	65.00					
	Wickman	118	80.00	1/1	80.00					
	Wold	118	70.00	1/1	70.00					
	Seidler	119	90.00	1/1	90.00					
	Newson	119	67.50	1/1	67.50					
	Newman	120	67.50	1/1	67.50					
	Litch	201	90.00	1/1	90.00					
	Walt	202	80.00	1/1	80.00					
	Knicker	203	60.00	1/1	60.00					
	Seidler	204	80.00	1/1	80.00					
	Gruber	204	85.00	1/1	85.00					
	Hopwood	205	60.00	1/1	60.00					
	10/15									
							</			





CASH and REPORT from 1-1-54 2-1 19 1954

DATE	TENANT'S NAME	Acct. No.	Rental Rate	RENTAL PERIOD		CASH RECEIVED			Amount Paid Due	Venc. Rent Schedule	CASH REPORT	
				From	To and Incl	Rent	Miscellaneous	Total			Cash on Hand	
	Bendigo	310	65.00	1-1-54	1-30-54	65.00						
	Smith	311	60.00	1-1-54	1-16-54	60.00						
	Waller	312	65.00	1-1-54	1-16-54	65.00						
	Waller	313	65.00	1-1-54	1-16-54	65.00						
	Waller	314	65.00	1-1-54	1-16-54	65.00						
	Waller	315	60.00	1-1-54	1-30-54	60.00						
	Waller	316	65.00	1-1-54	1-16-54	65.00						
	Waller	317	60.00	1-1-54	1-16-54	60.00						
	Waller	318	60.00	1-1-54	1-16-54	60.00						
	Waller	319	90.00	1-1-54	1-16-54	90.00						
	Waller	320	67.50	1-1-54	1-23-54	67.50						
	Waller	401	90.00	1-1-54	1-16-54	90.00						
	Waller	402	85.00	1-1-54	1-16-54	85.00						
	Waller	403	65.00	1-1-54	1-16-54	65.00						
	Waller	404		1-1-54	1-26-54	8.00						
	Waller	405		1-1-54	1-26-54	8.00						
	Waller	406	60.00	1-1-54	1-26-54	60.00						
	Waller	407	60.00	1-1-54	1-26-54	60.00						
	Waller	408	65.00	1-1-54	1-26-54	65.00						
	Waller	409	60.00	1-1-54	1-26-54	60.00						
	Waller	410	65.00	1-1-54	1-26-54	65.00						
	Waller	411	65.00	1-1-54	1-26-54	65.00						
	Waller	412	65.00	1-1-54	1-26-54	65.00						
	TOTALS	404										

RENTS and Requisition for Supplies:
 Signed by: _____
 Donatone's Exhibit No. 3-(Continued)





(Testimony of Maude Kennedy.)

Q. (By Mr. Whyte): Again I am going to put several questions to you concerning which apartments were vacant as of the close of January 1954.

I direct your attention to Apartment No. 304 here—— A. No, it wasn't rented.

Q. That wasn't rented?

A. That is right.

Q. Fine.

A. Or it would have been on there.

Q. And Apartment 404, are you able to state whether that was rented as of the 31st of January, 1954?

A. That was rented for two nights.

Q. From when to when? [363]

A. 1-24 to 1-26.

Q. Will you examine this Exhibit 3 and tell me whether any other apartments were vacant as of January 31, 1954, besides Apartment No. 304 and Apartment No. 404?

A. 119 has—this lady didn't check in until the 23rd of January. 119 was vacant.

Q. Was 119 occupied as of January 31, 1954?

A. No,—yes. She came in there on the 23rd of January.

Q. And she remained through the 31st of January?

She is still there. But we always have better rentals in these three months.

Mr. Whyte: I am going to ask that the last answer be stricken as not responsive to the question.

(Testimony of Maude Kennedy.)

The Court: Well, it isn't responsive to the question, but it was a statement which could have been made in response to a question which could have been asked. We will let it stand.

Q. (By Mr. Whyte): Any other apartments here which you find to be vacant as of the end of January 1954? A. No; three of them.

Mr. Whyte: No further questions.

Redirect Examination

Q. (By Mr. Enright): How many vacancies do you have now, Mrs. Kennedy? [364]

Mr. Whyte: Objected to as immaterial, not within the time of the receivership; has nothing to do with this case.

The Court: Overruled.

Mr. Whyte: And if she knows, no foundation is shown she is now the manager of this apartment. She is not testifying from any reports. She is testifying only from memory and no longer the manager.

The Court: Well, she was the manager up until the close of business on the 15th, as I understand it, and if the place just cleared out on the 15th it might be some evidence of the development of a bad condition there which, if it did go to that extreme, everyone moved, would create an inference there had been a bad period of management immediately preceding.

Your client hasn't been out of there very long. I think it is within the field of admissibility.

(Testimony of Maude Kennedy.)

Q. (By Mr. Enright): Tell me, did they relieve you yet as manager today?

A. No. They have had two managers. They didn't stay. I am still there packing.

Q. You are still there? A. Yes.

Q. Now, how many vacancies did they have there last week or as of Saturday night, or whatever date you want to select? [365]

A. Well, it was around 15. And I think maybe 17, but I don't want to say for sure.

Q. Did you ever have that many vacancies when Mr. Richman was managing that property?

A. No, never.

Q. Did you ever have that many while the Receiver was managing the property? A. No.

Mr. Whyte: Objected to as no sufficient foundation laid.

The Court: She has answered no. We will let it stand.

Mr. Whyte: Thank you.

Q. (By Mr. Enright): Now, it seems as though there is a little dispute here about whether you talked to Mr. Harrison at the time that refrigeration problem arose.

Mr. Whyte: Objected to as going beyond the recross examination; not within the scope of the recross.

The Court: We will allow it.

The Witness: Well, I called the office, but after thinking it over, after I left here, it was an error, because it was Miss Findeisen. And why I remem-

(Testimony of Maude Kennedy.)

bered it, because Miss Findeisen called me the afternoon after Mr. Hallberg had called me and talked to the Frigidaire man, and said that Mr. Hallberg was very pleased with the way that I had handled the situation. So it was Miss Findeisen and not Mr. Harrison. [366]

Mr. Enright: Those are all the questions I have.

Mr. Whyte: No further questions.

(Witness excused.)

Mr. Enright: May she be excused?

The Court: Yes.

Mr. Whyte: The Receiver and his attorney rest their case in chief, your Honor.

Mr. Enright: I will call Mr. Richman.

FREDERICK I. RICHMAN

recalled as a witness on behalf of the defendants, having been previously duly sworn, was examined and testified further as follows:

Mr. Martin: May it please the court, may the record show I am appearing at this time in the case again?

The Court: Yes. You came at the beginning of today's proceedings, didn't you?

Mr. Martin: That is right.

The Court: Now, did the young man, who has been sitting here the last few days, represent your office?

Mr. Martin: That he did, your Honor. I thought in fairness to him, he was entitled to a little rest, so I relieved him. And I understood so many things

(Testimony of Frederick I. Richman.)

were happening here I felt it my bounden duty to attend.

Direct Examination

Q. (By Mr. Enright): Have you made a study of the records of the Richman Trust and of the Receiver, to ascertain the amount of rents received by the Trust for the four-month period, December 1, [367] 1952, through February 28, 1953, on the one hand, as compared with the four-month period, December 1, 1953, through February 28, 1954, on the other hand?

Mr. Whyte: May I have that question read? I believe you mean three months.

Mr. Enright: Three months.

(The record was read.)

Q. (By Mr. Enright): How did they compare?

Mr. Whyte: Well now, I will object to that, as no sufficient foundation has been laid for that. The books and records are the best evidence.

The Court: Sustained. You will have to lay a little more foundation for it. I think it is a proper bit of evidence and might be a very useful bit, but there should be a firmer foundation.

The Witness: May I get the ledger?

The Court: Certainly.

Q. (By Mr. Enright): Have you had any experience in keeping books and records, Mr. Richman? A. Yes.

Q. State what experience you have had?

A. I took accounting in college and I have been bookkeeping ever since.

(Testimony of Frederick I. Richman.)

Q. When did you graduate from college?

A. 1927, academic; law 1928. [368]

Q. Did you have anything to do with the books and records of the Richman Trust during the period from its formation, January 1, 1946, through December 1, 1953?

A. I did.

Q. What did you have to do with them?

A. The books were set up under my direction and also Mr. Levering, a certified public accountant, and kept by my secretary, under my direction, for the entire period of time, up until November 30, 1953.

Q. You checked the books each and every month that you were agent for the Trust?

A. I did.

Q. Have you made an examination of the Receiver's books and records?

A. I have.

Q. Are they here in the courtroom?

A. They are.

Q. By the way, does the Receiver keep a journal?

A. He certainly does. There is a journal in those books.

Q. And he has had that journal ever since January 1, 1954?

A. It shows that the journal was used to set up the Receiver's books as of January 1, 1954.

Q. Has it been posted up to date? [369]

A. Posted up to February 28, 1954.

Q. So the Receiver himself had a journal and

(Testimony of Frederick I. Richman.)

he was in error when he stated there was no journal, is that right?

Mr. Whyte: Objected to as leading and suggestive.

The Court: Sustained.

Q. (By Mr. Enright): What is the fact concerning the Receiver having a journal?

A. The Receiver's books have a journal. It would be impossible to keep a set of double entry books without a journal.

Mr. Whyte: I move the last——

The Court: Have you seen the Receiver's journal?

The Witness: I have.

Q. (By Mr. Enright): Is it here in the courtroom? A. It is.

Q. Now, did you examine the books and records of the Receiver, to ascertain the answer to the question I have placed before you?

A. I took the figures off the Receiver's Petition for fees and Report to the Court.

Q. That is, his formal Petition he has filed here in court? A. That is correct.

Q. State the results of your making this comparison for those three months' period, December 1, 1952, through February [370] 28, 1953, and December 1, 1953, through February 28, 1954.

Mr. Whyte: There is still no sufficient foundation laid. There is nothing to show what the books and records show for December 1, 1952, to February 28, 1953.

(Testimony of Frederick I. Richman.)

The Court: What about that?

Q. (By Mr. Enright): State what the nature of the books was that you kept.

A. The books are in the courtroom. A general ledger was kept under my supervision, while I had them. I have taken the figures out of the general ledger of the old books of the Richman Trust, which were brought here to the courtroom.

Q. Do the books reflect the gross rents, as received by each apartment house?

Mr. Whyte: I object to that. No sufficient foundation has been laid. The books are the best evidence of what they reflect.

The Court: The books are here, are they?

Mr. Enright: Yes, they are.

The Witness: Yes.

The Court: They may be marked for identification and will be available to Mr. Whyte for cross examination. They need not be introduced into evidence. We will hear the main questions asked upon the foundation of the books being here and their availability for use of the Receiver's attorney.

The Witness: The books disclosed that for the months of [371] December 1952 and January 1953 and February 1953 that the gross rentals from the five apartment buildings of Richman Trust amounted to \$97,404.58.

The Receiver's report, filed in this action, showing rents collected by the Receiver for the month of December 1953, and the months of January and

(Testimony of Frederick I. Richman.)

February 1954, show gross rentals from the five apartment buildings of \$93,776.24.

The Court: Mr. Richman, pardon the interruption. Are you going to provide me with a summary?

The Witness: I have no summary, your Honor. I got this at noontime.

The Court: I had better take it as you go along then. Give me that answer again.

The Witness: December 1952, January and February 1953, \$97,404.58.

December 1953, January and February 1954, \$93,776.24, to which should be added the sum of \$1,290.59, being February collections which should have been collected by the Receiver, but were not collected by him; were collected by the plaintiff, of \$1,290.59; making a total——

Mr. Whyte: That is objected to, that portion of the answer, as being a conclusion of the witness, whether they should have been collected by the Receiver.

The Court: Sustained. That is a conclusion of law, Mr. Richman. [372]

The Witness: Then the \$1,290.59 should be included in February rents, in order to arrive at a comparable figure to the ninety-seven thousand heretofore given.

Making a comparative figure of operations of the three months under the Receiver of \$95,066.83, or approximately \$2,400.00 less.

Q. (By Mr. Enright): Directing your attention to this \$1,290.59, did you examine the Receiv-

(Testimony of Frederick I. Richman.)

er's books and records to ascertain how much in rents was collected on February 26th, 27th and 28th?

A. The Receiver's books do not show any collections there, but the reports of the managers, which were part of the Receiver's records, shows the amounts that the managers collected and were holding themselves accountable for, for the month of February.

The Receiver's collection is \$1,290.59 less than the managers reported on the month-end reports, which were similar to the Exhibits 1, 2 and 3 of the Western Arms, Receiver's exhibits.

Q. So the Receiver's Petition, wherein he recites, on page 12, that he estimated there was \$2,000.00 of rents collected on those three days, February 26th, 27th and 28th, upon your checking the reports you found it to be \$1,290.59, is that right?

A. That is correct. [373]

Q. Now, directing your attention to your former contract with the Richman Trust, to pay you ten per cent fee, did you at the time that contract was made own half the assets that became a part of the Richman Trust? A. I did.

Q. What had been your business experience with reference to those assets and similar properties during the previous approximate 15 to 18 years?

A. I had been operating the assets at the time the assets went in the Richman Trust, under the name of Nagel-Richman, from the time that Nagel-Richman was created in 1936.

(Testimony of Frederick I. Richman.)

Also I have been general manager of an oil company and had my own oil production, had a general contractor's license, and had had an automobile dealership, and many other business ventures.

Q. You had had experience in this Los Angeles area before you became agent of this Trust, is that right?

A. Yes, I had run apartment buildings for some banks and trust companies here in Los Angeles.

Q. That was back how far?

A. That was about 1932, during the Depression. There was nothing to do, to run them then; merely to try to collect rents.

Q. Are you also a licensed attorney at law?

A. I am.

Q. And were at the time you entered into this contract for ten per cent? A. I was.

Q. What was the approximate value of the assets that were transferred by you and the other trustor at the time the trust was created in November of 1945?

Mr. Whyte: I don't see the materiality of that question, your Honor.

The Court: It might be. On the chance it might be, we will let it in.

If it isn't, you can move to strike it out.

The Witness: My recollection is about \$375,000.00.

Q. (By Mr. Enright): What was the value of those assets as of the termination of the Trust, or when the Receiver took over, December 2, 1953?

(Testimony of Frederick I. Richman.)

A. \$1,200,000.00. You mean the net value of the assets?

Q. Yes. A. Yes.

Q. Now, did you pay the expenses of the managing of the properties out of your ten per cent fee?

A. I did. I furnished the office, telephone, all equipment, all stenographic and bookkeeping help, tax work, and paid the phone bill, paid the postage.

The Court: Did you pay the phone bills in each of the [375] apartment houses?

The Witness: No, the phone bills for the individual apartment houses were paid by the Trust. But for the general business of the Trust, which was conducted out of my office, I paid the phone bill. The Trust did not pay the phone in my office.

All ordering and conferences with suppliers and all business of the Trust was, except the actual housekeeping as would be taken up with the managers there, conducted from my office.

The Court: The managers were also paid by the Trust?

The Witness: That is correct.

The Court: What about Mr. Harrison?

The Witness: Mr. Harrison was paid by me entirely. He was never an employee of the Trust, or never was any other secretary of mine an employee of the Trust. I paid the Social Security, unemployment, compensation insurance on my secretary.

The Court: The books and records of the Trust were kept at your expense? You paid the entire cost for their keeping?

(Testimony of Frederick I. Richman.)

The Witness: I did.

The Court: Did you ever get any legal fees beyond the ten per cent contract fee for management?

The Witness: I did not.

The Court: Did you ever charge for any, whether you got [376] it or not?

The Witness: No.

The Court: Did you ever hire any outside lawyers to render legal services?

The Witness: On occasions I did.

The Court: In general, what was the character of work the attorneys did?

The Witness: During the regime of the Office of Price Administration, with rent control, in endeavoring to obtain more income from the Trust, which resulted in that very end, the Trust was sued by, I think it was, 27 tenants at the Fountain Manor. It was a rather long suit. With the consent of Mrs. Tidwell I hired outside attorneys to represent the Trust in that case.

Also there was one suit filed against the Trust for approximately eight or nine thousand dollars on purported rent overcharges. I hired an attorney on that matter.

As near as I can recall at this time, the amount of rent overcharges determined was \$110.00, I believe.

Q. (By Mr. Enright): In both instances that involved trial work?

A. Yes, that is correct.

(Testimony of Frederick I. Richman.)

Q. You rendered all legal services that were received by the Trust yourself, excepting trial?

A. Yes. [377]

Q. I guess there were some trials you took care of, Municipal Court trials?

A. Unlawful detainer actions, I would take care of all those matters, and things like that.

The Court: Did you have many of those?

The Witness: Had a lot of them.

Q. (By Mr. Enright): That was during rent control?

A. During rent control. Because you could get the courts to, if you could convince the court a tenant was undesirable, why, you would be able to retain a semblance of control over your buildings. And it was very desirable to prosecute those cases, in order to obtain control of your buildings.

Q. You made an examination of the records kept by the Receiver? A. I have.

Q. In making that examination, did you ascertain any expense or discover any expense to the Receiver himself, incurred as a result of his taking over and being Receiver in this matter?

A. I don't know of any. He used one of the apartments at the Oliver Cromwell, rent free, for an office. He used the telephone.

There is no evidence of any charges against the receivership for telephone charges, so I imagine they are all included [378] in the Oliver Cromwell bill. And I don't know of any——

He hired my secretary Harrison and drew checks

(Testimony of Frederick I. Richman.)

out of the Trust funds for payment of that salary. And paid the Social Security, unemployment and compensation on Harrison, and also on Findeisen out of the Trust bank account.

Q. Now, have you before you the Receiver's bank statements? A. I have.

Q. Will you examine them and state as to what cash amount of money was on deposit as of 10-20 and the end of each month?

A. The receiver commenced with the bank account in the Union Bank and closed that bank account out about the 29th of January.

The Receiver also opened a bank account at the Citizens National Bank as of December 17th. And that account, according to these statements, is still open.

As of December 10th the statement shows on deposit in the Receiver's account—this is 1953—\$24,201.86.

Mr. Whyte: What date was that, Mr. Richman?

The Witness: December 10th. As of December 21, 1953, in the Union Bank \$24,462.09.

And as of December 22, 1953, in the Citizens Bank \$3,035.04.

As of the end of December, in the Union Bank \$3,374.67, [379] and in the Citizens Bank as of the end of December \$7,940.04.

As of January 11th, in the Union Bank \$1,275.17.

As of January 11, 1954, in the Citizens Bank \$26,552.83.

As of January 18th, in the Union Bank \$303.57.

(Testimony of Frederick I. Richman.)

As of January 20th, in the Citizens Bank \$22,-201.81.

As of the end of January, in the Union Bank \$250.00.

At the end of January, in the Citizens Bank \$21,-224.61.

As of February 10th, Union Bank, \$250.00. Citizens Bank, \$29,788.31.

As of February 20th, Union Bank account was closed by that time, and the Citizens Bank \$32,-626.26.

As of February 26th, 1954, in the Citizens Bank \$31,934.10.

Q. (By Mr. Enright): Based on your experience in operating these properties, the period 1945 through 1953, was there ample cash on deposit to operate with?

Mr. Whyte: Objected to as calling for a conclusion of the witness, your Honor.

The Court: Overruled.

The Witness: Outside of the occasion when the Villa Carlotta had been sold, I never had a bank account like that to operate the Trust with.

The Court: Was your second installment of taxes paid on any of these properties at the time the Receiver ended his duties?

The Witness: I paid the entire year installment of taxes [380] on two of the properties in November of 1953, before the Receiver took over.

None of the taxes on the five apartment buildings, which were due April 20th, in the amount of

(Testimony of Frederick I. Richman.)

about fourteen thousand dollars,—was what the second half of taxes were—had been paid, according to the records of the Receiver.

As of February 28, 1954, there would have been collections for March and 20 days' collections in April, which would have been added to the bank account, to pay the \$14,000.00 tax bill on April 20th.

Q. (By Mr. Enright): Now, directing your attention to the Oliver Cromwell payment, do you have a check there, Receiver's canceled check, I think, for about \$2,027.00, for the payment on the Oliver Cromwell due on March 1, 1954?

A. I have.

Q. Do you have checks immediately preceding and succeeding that check there before you?

A. You are talking about the March 1st payment?

Q. Have you the checks of the previous payments, too?

A. I have the checks here for January 1st, February 1st and March 1st payment on the Oliver Cromwell.

Q. When were they cleared?

A. The check No. 204 to Pacific Mortgage Corporation, dated December 31, 1953, for \$2,027.25, shows perforation through the check marked "Paid 1-18-54." [381]

The checks of the Receiver preceding, starting with Check 185, to Columbia Pest Control is dated December 31st, and shows as having been paid 1-20-54.

(Testimony of Frederick I. Richman.)

Check 186, to Few Electric, dated December 31st, shows as having been paid January 22, 1954.

The Court: Mr. Enright, I don't want to rush you, but just for information, how long is it going to take to present your side of this case?

Mr. Enright: Well, it is going to be awfully difficult to complete it this afternoon.

The Court: I don't expect you to. It would be practically impossible, since I am going away. But you have, in addition to needing the Receiver's case decided here, you have a dispute with Mr. Martin's client. I think they should be decided together. It might be there are offsets of the Receiver which, nonetheless, ought to be paid by Mrs. Tidwell. And these things I can't tell until we have all the evidence and possibly have had some briefing or research on it.

But I would like to finish them all in one more sitting, if we can. How long do you think it will take?

An awful lot of this, it would seem, could be agreed to. I don't mean agreed as to the result, but what the evidence is. It is simple to look at these bank statements and determine when payments were made and what the amounts were. And it seems to me that the dates on which some of these payments [382] were made might be controlling.

Mr. Martin: If it please your Honor, if you are including me in your remarks——

The Court: I was.

Mr. Martin: I gathered as much.—I might say

that Mr. Camusi will handle those details and he is more familiar with them than I. What his situation is I don't recall.

I understood that that particular phase of the problem had been put over to a day certain. What day certain that was I don't remember. It was to be dealt with at that time.

The Court: I don't even remember that it was a day certain. Was it, Mr. Clerk?

Mr. Martin: Mr. Camusi indicated to me there was. I might have a misapprehension on that, and to follow the decision of this, or, at least, the submission of this particular matter.

The record might be checked on that. I haven't followed those details in that sense.

The Court: I know we talked about a pretrial, as between your office and Mr. Enright's. It seems that the thing is simple enough and the pretrial ought to suffice for the trial, if we were to have the trial instead of the pretrial.

Mr. Martin: I wouldn't want to involve myself in any definite statement. Mr. Camusi would handle those details.

I know he came back to the office, after having been down [383] here, and told me, among other things, this other phase of the matter had been put over either for pretrial or some other purpose, to a later date. I think he so informed me a week or two ago; I don't remember just when.

The Court: I recall putting it over. My recollection is it went over indefinitely.

Mr. Martin: That could be.

The Clerk: June 18th.

The Court: I see it is June 18th, the clerk informs me. Would this be practical, Mr. Enright: You are not going to be here tomorrow?

Mr. Enright: No, I have made other arrangements, your Honor. I understood you were going to start your criminal matter in the morning.

The Court: I am. We can still work in some time, if we are going to be free. But how about taking this matter up again? Do you think we can conclude it on a Monday? You know how Mondays are interrupted here.

Mr. Enright: Yes.

The Court: If we could complete it on a Monday, we might take it up on June 1st, so far as the Hallberg-Whyte petitions are concerned. That will leave us until the 18th to begin consideration of the Tidwell and Richman phase of it.

Do you think that is practical, or is trying to do this sort of thing on a Monday too difficult? [384]

Mr. Enright: My belief is that we could, the defense could present their evidence, Mr. Richman's evidence, in approximately two to two and a half hours; not more than that.

The Court: Let's try.

Mr. Enright: But I do not want to misinform the court. I consider this contractual right between Lyda Tidwell and her brother Frederick Richman as being entirely different from the Receiver's problem. I agree with the court that maybe there is a matter of offset that could be charged off between

the two of them. They have a contract settling their rights, as to the balance of this fund.

The Court: Well, let's continue the proceeding, upon which we are now engaged, until Tuesday, June 1st, at 11:00 o'clock.

Mr. Enright: Tuesday?

The Court: Yes. May 31st is a holiday, so Tuesday, June 1st, at 11:00.

Mrr. Martin: At 11:00, sir?

The Court Yes. That Tuesday will be our law and motion day, for that week, and I will be busy with short matters for an hour.

I am sorry to interrupt this just as you were getting well into this group of figures, but we have been in session, either in chambers or here, since about 9:00 this morning, and I want to close. [385]

We will stand adjourned.

(Whereupon, at 4:05 o'clock p.m., Monday, May 17, 1954, an adjournment was taken until Monday, June 7, 1954, at 11:00 o'clock a.m.)

* * * * * [386]

Mr. Whyte: The court please, I should like to ask the court's indulgence to reopen the case in chief for the Receiver and his attorneys, and put on briefly a witness with respect to the reasonable value of the attorneys' fee in connection with the defense of the Receiver.

I was taken by surprise at the testimony of Mr. Laugharn which was given here at the last session to the effect that he considered \$550.00 to be a reasonable fee for the time which had been devoted by the attorney for the Receiver in preparing the

defense to the objections and participating in this hearing.

So with the court's permission, if it may be granted, please, I would like to call briefly Mr. Paul Fussell of the firm of O'Melveny & Myers, to testify with respect to the reasonable value of those fees.

The Court: Of course, the court can judge the value of attorneys' fee, even without any witness. I don't recall that you had any expert testimony on this field, apparently relying on the court's application of the pertinent rules, [388] and then Mr. Enright produced a witness.

Do you have any objection to our hearing from Mr. Fussell, Mr. Enright?

Mr. Enright: No.

The Court: All right. The motion is granted to reopen.

Mr. Whyte: Mr. Fussell, will you take the stand, please?

PAUL FUSSELL

called as a witness on behalf of the Receiver, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, sir?

The Witness: Paul Fussell.

Direct Examination

Q. (By Mr. Whyte): Are you an attorney, Mr. Fussell? A. Yes, I am.

Q. With whom are you associated?

A. I am associated with O'Melveny & Myers.

(Testimony of Paul Fussell.)

Q. For how long have you practiced law continuously in this State?

A. Since the early part of 1921; about 33 years.

Q. The firm of O'Melveny & Myers, how large a firm is that, sir?

A. Well, it is a firm of about 60 attorneys, including the partners and those who are associated with the firm. [389]

Q. Are you the senior partner of the corporation department of that firm? A. Yes.

Q. Would you please tell the court what experience, if any, you have had with receiverships or trustees in possession of apartment houses and office buildings, properties of that type?

A. Well, I think that during the '30's in particular that I represented trustees in possession of approximately 30 buildings in Southern California, mostly in Los Angeles, some being office buildings, some hotels, and some apartment houses. I think the apartment houses were the most numerous of those three classes.

Q. Where were those apartment houses located, Mr. Fussell?

A. Well, the Los Angeles apartment houses were located largely in the western part of Los Angeles, or Hollywood, such apartment houses as the Arcady Apartment House, 2424 Wilshire Boulevard, and the Gaylord Apartment House, Cahuenga Halifax, an apartment house in Hollywood, the Seventh and Catalina Apartments.

(Testimony of Paul Fussell.)

Q. Mr. Fussell, I will ask you to please assume the following facts:

Assume that John Whyte, the attorney for the Receiver herein, has been engaged in the active practice of law in [390] Los Angeles, California, for a period of 12 to 13 years;

That the receivership in this matter continued for a period of three months, that is to say, from December 1, 1953, until February 28, 1954;

That following the expiration of the receivership the attorney, Mr. Whyte, prepared a report for the Receiver and petition for fees, as well as a petition for fees on his own behalf, as attorney for the Receiver;

Following the filing of those reports and petitions with the court there was filed herein by the defendant Frederick I. Richman objections to the report of the Receiver and his petition for fees, as well as objections to the petition for fees of the attorney, wherein an attempt was made to surcharge the Receiver for sums in excess of \$8,000.00 on account of his alleged mismanagement of the trust estate;

Further assume that the receivership assets consisted of principally five apartment buildings, whose value was in the neighborhood of a million and a half dollars;

And I shall further ask you to assume that in connection with the defense of the Receiver to the objections raised against his report, and petition for fees, the attorney, Mr. Whyte, devoted a total

(Testimony of Paul Fussell.)

of from 16 to 17 hours of his time in preparation for those hearings, in defending the Receiver;

That the hearings have already consumed approximately [391] four full court days, with the prospect of another court day before us, and possibly additional time.

Under those circumstances, and based upon those facts, do you have an opinion as to the reasonable value of the attorneys' fees in that connection?

Mr. Enright: To which objection is made upon the ground it misstates the facts of the record, that is, to wit, surcharge of \$8,000.00.

We object to the accounting and ask the plaintiff be charged with having received those moneys.

Secondly, we object upon the ground it misstates most of the facts of record, particularly, for example, it fails to state that the attorney in preparing the petition for the Receiver failed to comply with the court rules in setting forth the amount.

The Court: Mr. Fussell, bear in mind, in answering the question which is before you, that the surcharge is not intended to be applied to the Receiver, but rather to the successful litigant in the principal litigation.

Mr. Whyte: May I direct the court's attention to the objections for a moment in that connection?

The Court: Well, I think the objections as filed did undertake to apply the surcharge against the Receiver, but the statement counsel made in court as to what his objective is, or one of his objectives in the matter here is to have it [392] applied

(Testimony of Paul Fussell.)

against Mrs. Tidwell, who is not the receiver. Is that right?

Mr. Enright: Yes, your Honor.

The Court: So the Receiver came here upon pleadings which undertook to have him surcharged, but the theory of trial, which was announced rather early in the trial, is that the attempt to surcharge is not against the Receiver, Mr. Whyte's client, but against the prevailing litigant in Tidwell vs. Richman. Does that state it?

Mr. Whyte: Is that your position, Mr. Enright, that you are not now trying to surcharge the Receiver?

Mr. Enright: We surcharged that Receiver. We asked that it be a charge upon the funds in his hands. That is the way we pleaded it. That is the way we stated it in the inception. I am sure the Receiver understood it that way.

The Court: Well, I don't know whether he clearly understood it that way at the beginning, Mr. Enright, because I didn't. And while I have great respect for the Receiver's ability to read and understand, I doubt if, when the court understood originally you were trying to surcharge the man himself, he didn't draw the same conclusion; and apparently Mr. Whyte did.

But it became apparent in this trial settling the Receiver's fees that the attempt is to surcharge the fund, [393] or, as I stated originally, to surcharge Mrs. Tidwell instead of taking it out of the pocket of the Receiver.

(Testimony of Paul Fussell.)

Now, has it all been stated clearly?

Mr. Enright: I think so, your Honor. I would like to analyze the record.

Mr. Whyte: Then it is clear, Mr. Enright, that you were not attempting to surcharge the Receiver personally here.

Mr. Enright: I intend to and seek to charge the Receiver personally and submit that the charge should be against the fund.

The Court: Well, that means against the \$30,000.00 which he still has in his possession.

Mr. Enright: Could I have that read?

(The record was read.)

Mr. Enright: Certainly, your Honor. I stated that there is no need for this Receiver having to bring an action against the plaintiff to recover their money, that the plaintiff has received the benefits of and added to the fund; rather, charged to the plaintiff.

The Court: Now, Mr. Fussell, do you remember the question?

The Witness: I think the question is do I have an opinion under the state of facts as given by Mr. Whyte and as amplified by your Honor. And the answer to that question is I do have an opinion. [394]

Q. (By Mr. Whyte): What is your opinion, Mr. Fussell?

A. I think the reasonable value of the services, on the assumptions stated, would be between \$1,000.00 and \$1,200.00.

(Testimony of Paul Fussell.)

Mr. Whyte: You may cross-examine, Mr. Enright.

Cross Examination

Q. (By Mr. Enright): Would you assume, Mr. Fussell, for the purposes of the question of your opinion, that the attorney for the Receiver failed to advise the Receiver to collect \$785.00 of this fund, being three days' rents?

Mr. Whyte: Objected to as immaterial, your Honor?

The Court: Overruled.

The Witness: On that assumption, and assuming that it was negligence on the part of the attorney to fail to so advise, I would think there should be a modest diminution in what would otherwise be a reasonable fee.

The Court: You assumed, in answering the question, the attorney for the Receiver had fully and correctly discharged his duty in that capacity?

The Witness: In answer to the question on my principal examination?

The Court: Yes.

The Witness: I assume he had done so within the limits of a prudent practitioner at the bar, yes, sir. [395]

The Court: Thank you.

Q. (By Mr. Enright): Now, I stated that as \$785.00. I should have stated that as \$1,290.00 rents.

I now want to ask you another question. Instead of the \$1,290.00 rents, and in addition to that assume that the attorney failed to and did not advise

(Testimony of Paul Fussell.)

the Receiver to retain in his possession \$785.00 petty cash, which the order he, the attorney, received specifically directed the Receiver to retain that sum of money.

Mr. Whyte: Again I want to register an objection on immateriality. I want to point out the ground a little more specifically.

The questions asked of this witness were with reference to reasonable value of the attorney's services in defending the Receiver against the objections raised to his report and petition for fees.

The Court: Didn't the question go as to all the services rendered by the attorney in the administration of the receivership?

Mr. Whyte: No, it did not, your Honor. The question to Mr. Fussell went only with reference to work done defending the Receiver against the objections filed. The testimony in the record by Mr. Laugharn was that for the work—was the work of the attorney advising the Receiver during the period of receivership, that the sum of a thousand dollars per month [396] was a reasonable fee.

Now, the question being asked of this expert is simply with reference to the defense of the Receiver in this court proceeding and the preparation therefor. So that any questions with regard to how the attorney may have advised the Receiver during the pendency of the receivership has no pertinency whatever to the question which has been asked of this expert, as to whether or not the attorney is

(Testimony of Paul Fussell.)

entitled to so much for defending the Receiver against the objections to the report.

The Court: Objection overruled.

The Witness: May I have the question read?

(The question was read.)

The Witness: I think that would affect my answer, if two factors occur. First, if the failure stated on the part of the attorney was due to his negligence or a failure to observe the standards of professional ability, which are customary in these matters, and, secondly, if it caused loss.

Q. (By Mr. Enright): Thank you, Mr. Fussell.

Now, assume further that the attorney failed to advise and did not advise the Receiver that an order of the Los Angeles Smog Control Board, if not complied with by the Receiver, would subject the Receiver's agent, to wit, the manager of an apartment house and possibly other persons to criminal charges, to wit, a misdemeanor, and the attorney is [397] seeking extraordinary compensation for his services as attorney to the Receiver, to which petition for extraordinary services and objections were filed, and we are here trying the objections.

Would that failure to advise have any bearing upon your opinion as to whether he should be compensated for presenting, and, may it please, not defending his application for fees?

Mr. Whyte: For the record, the same objection. It is immaterial as to this witness, who has been asked merely as to the proper fee to be given,

(Testimony of Paul Fussell.)

awarded to the attorney for defending the Receiver against the objections filed to his report.

You can ask him with reference to anything the attorney may have done in connection with advising the Receiver during the pendency of the receivership.

The Court: Do I understand, Mr. Whyte, the full area of inquiry with this witness, so far as you are concerned, is the appearance here at the time of giving the accounting in open court?

Mr. Whyte: Exactly, your Honor. Just the appearance and the preparation for this hearing. That is all this witness was asked to testify to.

The Court: All right. The objection is sustained.

Mr. Enright: May I point out, your Honor, that if my question is directed to the proposition, we perhaps wouldn't [398] be here hearing these questions of fees had the attorney performed his duties.

The Court: That is a matter to go into in determining the amount of fees to be allowed for the principal services rendered.

Mr. Enright: I wish to make an offer of proof, that through this witness on the stand, he would testify that the failure of the attorney to perform this duty would affect his opinion as to the amount of fees he should receive, upon a hearing as to the amount of time taken to determine fees.

The Court: The question of principal litigation so far has been the services of the Receiver and the services of the attorney have been only, you might say, inferentially litigated here.

(Testimony of Paul Fussell.)

Apparently, it is Mr. Whyte's position that the court could determine the value of the services rendered by its own officer, and that some of the value of the services rendered at a trial can perhaps best be appraised by the trier of fact.

Mr. Enright: I appreciate that, your Honor. But we have a pyramiding. First he asks for \$3,000.00 plus extraordinary fees. And then he asks to be compensated for the time to hear whether or not \$3,000.00 plus extraordinary is reasonable.

Mr. Whyte: You are mistaken. I am not asking for any compensation for the time I have had to spend up here in [399] defending my own fees. I am asking Mr. Fussell for his opinion as to my compensation for defending my client, the Receiver, who was appointed as an officer of this court and whose report is under attack. That is what I am asking for compensation for.

The Court: That is what I understood when I sustained your objection.

Q. (By Mr. Enright): Now, Mr. Fussell, assume that the attorney for the Receiver failed to allege in the petition what fees the Receiver sought for his services, in violation of the rules of this court, to specify the amount of fees the Receiver sought for his services. Would that affect your opinion?

The Court: I will have to take the responsibility for that, Mr. Enright. Mr. Whyte called me and said, "We are having a little trouble drawing this

(Testimony of Paul Fussell.)

report," and he asked whether he had to specify or whether to leave it to the discretion of the court.

I felt at the time—perhaps not having had that rule driven too much home in my consideration—that asking for reasonable fees and leaving it to the court to determine what they should be upon hearing the evidence was the better practice. And rightly or wrongly, I told him I would accept the report in that form.

So I think if a lawyer goes to the judge for consent in [400] a matter, and the court gives it, that is not malpractice.

Mr. Enright: I did not so consider it to be malpractice. I did consider it to be——

The Court: It is not deviation from the reasonable prudent representation of your client.

Mr. Enright: I desire to offer evidence that it is in variance from reasonable prudent presentation. That was the purpose of my inquiry.

The attorney had failed to use reasonable prudence in presenting the petition. He should have advised the court of the rule and the reason of the rule, and the research there available so the court could have been informed when it made its order.

The Court: Well, perhaps I should have kept my eye on the appellate court as well as on this court.

Mr. Enright: Well, I don't know what the appellate has to do with this case. Is that a ruling? May I construe that as a ruling that the question is improper?

The Court: Well, we will allow the question.

(Testimony of Paul Fussell.)

The Witness: As I understand the question, my answer would be, in light of the additional circumstances stated by the judge, I should not deem the failure to specify an amount in the petition to be a reason to affect the amount which I stated in my principal answer.

Q. (By Mr. Enright): Now, will you further assume, for [401] the purpose of your answer just given, that Mr. Whyte, the attorney, failed to communicate with the attorney for the defendant when taking that matter up with the court.

Do you consider that should be considered, and would that affect your judgment as to his fees?

A. That would not, sir, no.

Q. It would not? A. No.

Q. Now, in addition to the \$785.00 and \$1,290.00, there was a third item of two thousand approximately twenty-nine dollars.

Will you assume that the \$2,029.00 was evidenced by a check drawn on the 27th of February, one day after the attorney for the Receiver had received a copy of the order of the court dated February 26th, and that the \$2,029.00 was not received by the payee until after March 1st, and that the payment of the \$2,029.00 by the Receiver was contrary to the order of the court on February 26, 1954;

And further assume that the attorney failed and neglected to advise his client, the Receiver, or in any other respect concerning that amount. Would that affect your opinion?

(Testimony of Paul Fussell.)

Mr. Whyte: Again may I enter an objection to the question. It calls for evidence which is immaterial, calling for evidence with reference to whether or not the attorney performed his duties in connection with advising the Receiver [402] during the pendency of the receivership.

As to the reasonable value of his fee, in that connection it might have some pertinency. Where this witness' testimony is limited to the reasonable value of the attorney's services in defending the Receiver against the objections filed to his report, I submit it is not material.

The Court: Sustained.

Mr. Enright: I offer to prove through this witness that the circumstances as stated in the question would affect and decrease the amount of the moneys payable.

Q. (By Mr. Enright): Will you further assume a fourth item, that in addition to the \$785.00 and the \$1,290.00 and \$2,029.00, the \$3,000.00, a claim for services rendered before the Receiver was appointed, which claim the Receiver states in his accounting as being an account payable, but which the Receiver did not pay, and which \$3,000.00 plus the \$2,000.00, making five plus the \$1,290.00, making \$6,290.00, plus the \$785.00, constituting less than \$7,000.00 is the so-called \$8,000.00 for which the attorney says he is defending the Receiver, would the fact that that \$3,000.00 listed as a payable in his accounting in any manner affect your opinion on an \$8,000.00 so-called objections?

(Testimony of Paul Fussell.)

Mr. Whyte: Objected to again as immaterial. The question is highly uncertain.

The Court: Sustained. [403]

Mr. Enright: May I point out, your Honor, that they claim—the question asked of this witness was that he is defending a Receiver against a surcharge of \$8,000.00. He gave an opinion here it is worth \$1,000.00. There is no surcharge involved in that \$3,000.00. They acknowledged it as an account payable.

The Court: What it comes down to is this man is asked his opinion of the value of time spent in drawing a pleading and trying a case. Every case has its merits and every case has its demerits. Whether there can be any allowance for it or not might depend on circumstances outside of the direct testimony of this witness. But we have to limit cross examination to the question inquired into upon direct.

We also have to apply an inquiry as to relevancy as to all testimony in the case after it is submitted, regardless of what the ruling might be at the time that testimony is offered.

Q. (By Mr. Enright): Mr. Fussell, would your opinion of the thousand dollars be in any manner affected if you were to assume that over half of this time in court—I don't know how many of those 16, 18 hours' preparation—have involved the failure of the Receiver to retain control of the \$785.00 or to collect the \$1,290.00?

(Testimony of Paul Fussell.)

A. No, I don't think it would be affected by any failure on the part of the Receiver in those respects. [404]

Q. You feel the attorney was entitled to a thousand dollars, is that it, for——

A. Yes, on the assumption that I am making, that the proceeding is being conducted in good faith; I feel that he is entitled to be paid for his time, yes, sir.

Mr. Enright: I have no further questions.

Mr. Whyte: I have just one question.

Redirect Examination

Q. (By Mr. Whyte): Did I understand your testimony to be, Mr. Fussell, that you prescribed a range of from a thousand to twelve hundred dollars for the services specified?

A. That is correct.

Mr. Whyte: I have no further questions.

(Witness excused.)

The Court: Was that the extent to which you wished to reopen your case?

Mr. Whyte: That is right.

The Court: Do you want to begin now, Mr. Enright?

Mr. Enright: Yes, I will do my best. I will call Mr. Richman, your Honor, back again. [405]

FREDERICK I. RICHMAN

recalled as a witness on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Enright): At our adjournment, Mr. Richman, I believe we were covering the subject matter of this two thousand dollars plus, the Oliver Cromwell payment.

Do you have before you the checks evidencing the payment on the previous months and on the month of March 1954? A. I have.

Q. Will you state from the checks when those payments were made the previous months?

A. Check No. 204, dated December 31, 1953, payable to Pacific Mortgage Corporation for \$2,027.25, marked in the voucher part of the check "1-1-54 payment, MB 302912." And it bears perforations of having been paid by the bank of 1-18-54.

The part in the voucher part of "MB 302912" was the [406] number of the Oliver Cromwell loan with the Pacific Mortgage Company. The checks——

The Court: May I have the amount of that check again?

The Witness: \$2,027.25.

Mr. Whyte: And the date, Mr. Richman?

The Witness: The date was December 31, 1953. That is the date of the check. The perforation is 1-18-54.

The checks prior thereto, with the group I have

(Testimony of Frederick I. Richman.)

here, are commencing with Check No. 185, to Columbia Pest Control, dated December 31, and cleared the bank on 1-20-54.

Check No. 186, dated December 31st, cleared the bank 1-22-54.

Check No. 187, dated December 31, 1953, cleared the bank 1-21-54.

Check No. 191, dated December 31, '53, cleared the bank 1-22-54.

Check No. 192, dated December 31, '53, cleared the bank 1-22-54.

Check No. 194, dated December 31, 1953, cleared the bank 1-20-54.

The balance of the checks proceed through there, and they were all dated December 31st, but did not clear the bank until around the 20th of January.

And the check to Pacific Mortgage, being Check No. 204, was written after the December 31, 1953 payroll checks had [407] been written.

In regard to the February 1, 1954 payment, Check No. 314, dated January 30, 1954, to Pacific Mortgage Corporation, \$2,027.25, marked in the voucher part "2-1-54 payment," is perforated by the bank as having cleared it on 2-9-54. That check was written after the payroll checks of January 31st period, 1954.

The checks just prior thereto and just following show payments from clearance at the bank of around 2-9 and 2-10-54.

Check No. 433, payable to the Pacific Mortgage Company for \$2,027.25.

(Testimony of Frederick I. Richman.)

Q. (By Mr. Enright): Now, this is the one involved, isn't it?

A. Yes. The check is dated February 27, '54. It is marked on the voucher part "3-1-54 payment."

It shows perforation from the bank, as having cleared the bank on 3-4-54; the 27th of February was a Saturday and was probably mailed out and received by Pacific Mortgage on the 2nd and deposited in their bank, and by the time it came back to the branch of the Citizens Bank at 3rd and Western, through the clearing house, it would be marked "Fourth, '54."

That Check 433 was written before the payroll of February 28, 1954. The checkbook shows in the stub part, commencing with Check No. 425, the stub was dated February 28th.

426 is dated February 26th; 427 check number has no date; [408] 428 check number, dated 2-26; 429 number was dated 2-28; 431 check number was dated 2-26; 432 check number was dated 2-26; 433 check number was dated 2-27. That 433 is the one in question, Pacific Mortgage Corporation. The stub part of the checkbook shows payment of 3-1-54, \$2,027.25.

Check No. 434 is dated 2-27-54. And then commencing with Check No. 435, it appears to be the payroll for the last half of February, and those are dated 2-28-54.

The previous checks, the payroll was all written before the Pacific Mortgage check. And this is the only one where the payroll for the——

(Testimony of Frederick I. Richman.)

Mr. Whyte: That is all moved to be stricken as not responsive to the question, pure conclusion of the witness.

The Witness: The checks are here for your examination, to see whether the payroll numbered check and the others fit in, Mr. Whyte.

The Court: The motion will be denied. The court will have to look to the exhibits, of course.

I don't think, in this sort of thing, we can cut the verbal testimony too close to the line or hold it too close to the line of technical admissibility, because insofar as it gives figures and dates and amounts, it has to be verified from the documentary evidence, which, of course, is controlling, and its reference to those dates and amounts and so on is largely to direct the court's attention to other testimony [409] which the witness usually gives, which bears upon the legal issues, rather than the purely factual.

Hence, I don't mean to hold that a particular thing will be or will not be considered material or relevant, when it comes to submission of the case upon the merits, and I am letting certain testimony in which might be objectionable if we were going to look to it instead of to the checks, because it tends to orient the other oral testimony.

The Witness: May I ask your Honor, do you wish these checks to be put into evidence? I have read all the information I gave from these checks.

The Court: I think they should be. Either the

(Testimony of Frederick I. Richman.)

checks should be or some memorandum. Possibly we can get it from the accounting, I don't know.

Just so we can go to some paper source and do our computing from that.

The Witness: Well then, that would be—you wish in evidence Check No. 204 and these others?

The Court: Either the checks or some report. I have seen reference to these in something, and I don't know if it was an affidavit or if it was the Receiver's report, or what.

But it should be before the court in its documentary form or by way of an admission.

Mr. Enright: I will offer in evidence these checks the witness has just read from. [410]

The Court: Received.

The Clerk: Defendants' D.

(The documents referred to were marked Defendants' Exhibit D and were received in evidence.)

Q. (By Mr. Enright): The amounts of \$2,027.25, evidenced by the February 27, 1954 check, was in payment of the March 1st installment on the Oliver Cromwell loan, is that correct?

A. Yes. It so shows in the stub of the check-book and on the voucher part of the check, and according to the books, it was the payment that was not due until March 1, 1954. The previous payments had been made.

Q. Now, I want to direct your attention to the Oxy-Aire contract. Did you have a conversation with Messrs. Hallberg and Whyte at your office,

(Testimony of Frederick I. Richman.)

during the period sometime December 1st to December 4, 1953? A. Yes, I did.

The Court: Mr. Enright, I would rather like to get this Oxy-Aire matter in one sitting, so we might prudently adjourn now until this afternoon. Would you say 1:45 would be convenient?

Mr. Enright: Yes.

The Court: 1:45.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:45 o'clock p.m. of the same day.) [411]

Los Angeles, Monday, June 7, 1954, 1:45 p.m.

The Court: Proceed.

FREDERICK I. RICHMAN

recalled as a witness on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Enright): I believe, Mr. Richman, you had stated you had had a conversation with Mr. Hallberg and Mr. Whyte during the period December 1st to December 4th. Now, do you have a means of ascertaining what day it was you had that conversation?

Q. Yes. The conversation took place December 3rd.

Q. At that time was the subject matter of the Oxy-Aire contacts discussed? A. It was.

(Testimony of Frederick I. Richman.)

Q. What was said?

A. On that occasion it was the first time that the Receiver and Mr. Whyte had come in to my office since the appointment. I was going over the current files with them at the time.

I showed them the current file on the smog question at the Oliver Cromwell and at the Canterbury. And I informed them that the trust had received a notice to apply for a permit; [412] that we had applied for a permit. And it had been denied on the grounds the incinerator, as it existed at that time, could not continue without some corrections, and that I had entered into a contract with Oxy-Aire—it wasn't called Oxy-Aire at that time—to put in a catalytic agency and the application, together with the plans, had been filed, but as yet I had not received back the approval on it. There wasn't anything to do on that matter until the approval came back from the Air Pollution Control District.

Q. Did you later receive a document designated "Approval" or "Approved"?

A. I received back the application with the plans marked, "Approved," on them on December 7, 1953.

I immediately put the documents into another envelope and mailed them to Roy E. Hallberg, 418 South Normandie, Los Angeles 5. He had taken an apartment in the Oliver Cromwell to conduct the affairs of the receivership.

(Testimony of Frederick I. Richman.)

Q. When was the next time you heard any more or anything concerning this Oxy-Aire contract?

A. About the middle of the month Mr. Manalis of the Oxy-Aire Company called me and wanted to know if I had gotten the application back.

Mr. Whyte: Objected to as hearsay, your Honor.

Q. (By Mr. Enright): You received a telephone call about the middle of what month? [413]

A. December.

Q. Do not state what the substance of the phone call was.

The Court: The exact conversation goes out. The fact a call was made, the fact of the call remains.

Q. (By Mr. Enright): After receiving this call about the middle of December 1953, what did you next do? A. I did nothing.

Q. When was the next time that you heard anything concerning the Oxy-Aire contract?

A. January 29, 1954.

Q. And what occurred at that time?

A. I had left my office and gone home. My secretary called me and said Mr. Whyte had been trying to get in touch with me.

Q. Then what did you do?

A. I tried to contact Mr.—my secretary gave me the message that Mr. Whyte had left there, that there was a criminal complaint to be heard February 1st in Lincoln Heights Jail and I was named as one of the defendants.

I immediately tried to get in touch with Mr. Hallberg both at the Oliver Cromwell and at Cor-

(Testimony of Frederick I. Richman.)

ona del Mar, but was unsuccessful in reaching him at either place.

Q. January 29th was a Friday, is that correct?

A. That is correct. [414]

Q. Did you appear in criminal court on February 1st? A. I did.

Q. Who was present at that time concerning this matter?

A. Mr. Whyte was present, you were present, I was present; that is all—the judge.

Q. Was the manager of one of the houses there, too, also?

A. No, the manager was not there.

Q. What occurred in connection with this Oxy-Aire contract at that time?

A. I was charged with a criminal violation of the Public Health and Safety Code and was released on my own recognizance.

Q. What services did Mr. Whyte render, that you observed, at that time?

A. None that I know of.

Q. Was there a statement made in your behalf in the presence of Mr. Whyte?

A. There was a statement made by Mr. Enright, my attorney, in the presence of Mr. Whyte, to the judge to the effect I no longer had anything to do with the properties and that it was a matter between the Receiver and the Smog Control District.

Q. Have you since that time examined the Oxy-Aire contract file? [415] A. I have.

(Testimony of Frederick I. Richman.)

Q. Did you find in it a letter prepared or purporting to be prepared by Mr. Hallberg?

A. I have the letter here.

Q. I direct your attention to a letter dated January 22, 1954, and particularly to that portion of it pertaining to drawings, or approved plans. Do you find that in there? A. I do.

Q. Now, when examining the Oxy-Aire file, did you ascertain what occurred with reference to those drawings?

A. Not from the file. I ascertained it with my conversation with Mr. Harrison on January 30th, what had happened to it.

Q. Mr. Harrison, that is the bookkeeper and agent of the Receiver? A. That is correct.

Q. State what was stated, said by the agent, Mr. Harrison, concerning the Oxy-Aire contract file.

Mr. Whyte: Objected to as calling for hearsay evidence, your Honor, and being offered as evidence of the truth of the fact which he is attempting to elicit from this witness.

The Court: What about it, Mr. Enright?

Mr. Enright: Mr. Harrison is the agent and employee of the Receiver. It is not hearsay, what his agent and the Receiver did. [416]

Mr. Whyte: He is not a party to this proceeding.

The Court: Overruled.

The Witness: After January 29th, when I couldn't get in touch with Mr. Hallberg or Mr. Whyte, I contacted Mr. Harrison and on that day I went out to his apartment with Mr. Enright, to

(Testimony of Frederick I. Richman.)

find out what the situation was relative to the criminal complaint that I was supposed to be in Lincoln Heights Jail on February 1st for.

The Court: Do you mean in jail?

The Witness: That is where I was told to be, at Lincoln Heights Jail.

The Court: You weren't actually told to be in jail, were you?

The Witness: Yes; Lincoln Heights Jail.

The Court: Weren't you directed to the Department of the Municipal Court that meets in the jail building?

The Witness: That is where it turned out to be over there.

The Court: It wasn't in a cell, was it?

The Witness: No.

The Court: Throughout the hearing people have referred to going to Lincoln Heights Jail. From the other evidence on the matter it has seemed to me they were merely cited to the court which convenes in the building where the jail is located. [417]

You don't consider that you come to jail when you come up here, and yet the Marshal has detention rooms in this building, and people are under detention there right now.

Q. (By Mr. Enright): Did you ever appear in any court upon a criminal charge of any kind, other than this one? A. Myself as the defendant?

Q. Yes. A. No.

Q. Now, directing your attention to the conversation with Mr. Harrison concerning this subject

(Testimony of Frederick I. Richman.)

matter of the drawings on the Oxy-Aire contract and its approval by the Board——

A. I asked Mr. Harrison what it was all about. Mr. Harrison stated he had just heard that afternoon of the criminal complaint and Mrs. McConnell, the manager at the Oliver Cromwell, also was named as a defendant.

I asked Harrison what happened, as I thought everything was taken care of. I told Harrison I mailed the application, approved, and drawings that had been approved by the Smog District to Mr. Hallberg.

Mr. Harrison said that Mr. Hallberg had received them, that he had discussed the matter of the contracts with Mr. Whyte and Mr. Whyte had advised Mr. Hallberg he was not bound by those contracts.

Mr. Harrison told me that Mr. Hallberg directed him to call Oxy-Aire and tell them to do nothing on the matter. [418]

Mr. Harrison stated that just about that time Mr. Manalis called him and wanted to know where the plans were, and Harrison stated that he told Mr. Manalis that the Receiver was not bound by the contract and just to hold up everything.

Subsequently, Mr. Harrison stated on about the middle of January a citation had been received for violation at the Oliver Cromwell. Upon receipt of that violation Mr. Hallberg had directed him, Mr. Harrison, to call Oxy-Aire and have them proceed with the work.

Mr. Harrison stated that he called Manalis and

(Testimony of Frederick I. Richman.)

told him to proceed, and Mr. Manalis said he did not have the plans and specifications.

That occurred along about the 13th of January, as near as Mr. Harrison could recollect. And Mr. Harrison stated that he looked in the office for the approved plans and application from the Smog District, but could not find them.

And the next time he was able to get in touch with Mr. Hallberg was when he came to the office of the Receiver at the Oliver Cromwell on January 22nd. Mr. Hallberg went through his briefcase and found the application and approved plans.

That Mr. Hallberg then dictated the letter for Mr. Harrison to send to the Air Pollution Control, Inc., which Mr. Hallberg signed, enclosing the plans and specifications [419] and the approval of the application to Air Pollution Control, Inc.

That Mr. Harrison stated that Mr. Hallberg also told him to call them and get them on the phone in a hurry.

Mr. Harrison stated that Air Pollution Control, Inc. stated that there was a shortage of a certain material at that time, and they didn't quite know when they could get on the job. But they would get onto it as quickly as they could.

Mr. Harrison stated that the next thing he knew about it was the filing of the criminal action, and Mrs. McConnell, the manager at the Oliver Cromwell, was all upset about the matter.

Mr. Whyte: I am going to move to strike all that testimony again as hearsay on several grounds.

(Testimony of Frederick I. Richman.)

To begin with, the testimony of an agent is not binding upon his principal unless it is made during the course of his employment.

There is no showing here that any conversations that Mr. Harrison had with Mr. Richman, in direct violation of the order appointing the Receiver, which states in so many words that the plaintiff Lyda Tidwell and the defendant, and so forth, are restrained from disturbing possession of the Receiver or in any manner molesting the Receiver or interfering directly or indirectly with the administration of the receivership. [420]

There was no authority, no authority in Mr. Richman to talk with any agent of the Receiver or to discuss the matter with the Receiver, without the permission of his attorney or without the permission of this court.

The Court: Don't you think he could call and ask for information?

Mr. Whyte: I beg your pardon?

The Court: Don't you think he could properly call and ask for information?

Mr. Whyte: Surely, but to go behind the Receiver's back, as Mr. Richman did in this instance, to go out and talk to his agent behind his back, to spy upon his operations without his knowledge, seems to me that those statements are clearly outside the scope of the agent's authority.

The Witness: Mr. Whyte, I resent that. I tried to get——

The Court: Just a minute, Mr. Richman.

(Testimony of Frederick I. Richman.)

The Witness: I tried to get hold of the Receiver.

Q. (By Mr. Enright): Mr. Richman.

A. And he wasn't available. I have never been charged with a crime before in my life.

Mr. Enright: I know that this is——

The Witness: Talking about my going behind somebody's back——

The Court: If you will just restrain yourself, the court will protect you. [421]

Mr. Whyte: Mr. Harrison is not here. He is not subject to any cross examination by me as to these wild statements that have been made.

Now, I submit again that is purely hearsay testimony.

The Court: I don't think going to Mr. Harrison, under the circumstances, was out of order. You have the circumstance that a man has been cited for violation of a criminal law. He tries to get in touch with the Receiver. He tries to get in touch with the Receiver's attorney. He is unable to do so.

The transaction to be litigated grows out of the property, the management of the property in which the man has an interest. He is a defendant or prospective defendant in a criminal prosecution.

Doesn't he have a right to seek such information as he can and is not harassing Mr. Hallberg's agent at that time?

Mr. Whyte: Mr. Harrison was Mr. Hallberg's bookkeeper at that time, but the statements which he made to Mr. Richman, that have been testified

(Testimony of Frederick I. Richman.)

to here, are certainly not within the scope of his employment by—he is not being paid by Mr. Hallberg to go around, telling third persons about how this thing is being operated.

Mr. Richman didn't go to him and ask when the criminal citation was coming up, or, "What time am I to appear in court," or about matters which were germane to the criminal [422] matter, which was to come along on the following Monday morning.

Mr. Richman has been testifying here as to what went on in the past in the operation of the receivership in a private office out there.

Again I submit it is not within the scope of an agent's authority, to discuss those matters with outsiders.

The Court: I think legally it either isn't or we would be cutting it awfully fine, and I don't want to cut it awfully fine.

Of course, you should bear in mind that a court can size up the situation, sitting in an impartial position as the court does, and I think there is being entirely too much emphasis placed upon this Smog Control violation. Not that smog control isn't important and that something should have been done to prevent this occurrence. But I don't think it is the controlling thing in the evidence here.

Mr. Enright: In view of the objection, I would like to offer in evidence Mr. Hallberg's letter of January 22nd.

The Court: Received.

(Testimony of Frederick I. Richman.)

The Clerk: Defendants' E in evidence.

(The document referred to was marked Defendants' Exhibit E and was received in evidence.)

DEFENDANTS' EXHIBIT E

Air Pollution Control, Inc. Jan. 22, 1954
357 North La Brea Avenue
Los Angeles 36, California
Attention: Mr. B. Manalis

Gentlemen:

This letter will confirm Mr. Harrison's telephone conversation with you on January 15th giving you my instructions to proceed with the construction and installation of your Oxyaire Catalyst proposed for the incinerator at the Oliver Cromwell Apartment Hotel, 418 South Normandie Avenue, Los Angeles.

As you request, I am attaching the plans which you submitted to the Air Pollution Control District and which now carry their approval for construction. The letter from the Air Pollution Control District enclosing the approved plans is non-committal insofar as final approval is concerned. This, Mr. Harrison also pointed out in its relation to the contract with you for completion and installation of a remedy capable of passing Air Pollution Control District standards as covered and completed with you and by Mr. Richman on October 23 and 26th, 1953, respectively.

I shall be glad to have a report from you as your work on this progresses.

Yours very truly,

/s/ Roy E. Hallberg,

as Receiver of the Assets of the former Richman Trust.

:H—Enc.

Q. (By Mr. Enright): Directing your attention to Exhibit B, Mr. Hallberg's memorandum, and to the date January [423] 13th:

"Received notice re: Oliver Cromwell Incinerator. Oxy-Aire vice president said he would handle with authorities. Urged him to get on our job. Said drawings not received. Harrison to get them authority with letter (outlined contents for letter)."

That is at the time of the citation, the criminal citation for the smog violation?

A. No, I think that is the time of the violation of the operation of the incinerator. The notice was given, that was given January 13th, the criminal citation came through some days later, when nothing was done, and the incinerator was still being operated.

Q. The drawings there referred to, there was only one set of drawings involved in this transaction, wasn't there? A. That is correct.

Q. So from January 13th to the 22nd they must have been in the hands of the Receiver?

A. They were in the hands of the Receiver from December 7th or 8th, when I mailed them to them, until January 22nd.

(Testimony of Frederick I. Richman.)

Mr. Whyte: I am going to move that answer be stricken for the purpose of making objection to the question.

The question is that between a certain period of time the plans and drawings must have been in the possession of [424] the Receiver.

Mr. Enright: I will withdraw the question. The documents speak for themselves.

Mr. Whyte: There is no basis for this gentleman testifying as to that.

Q. (By Mr. Enright): You did transmit the drawings to the Receiver on or about December 7th?

A. I did.

Q. There was only one set of drawings?

A. That is correct.

Q. Now, directing your attention to Mr. Hallberg, did you have a conversation with him during December concerning the subject matter of his experience in managing apartment houses?

A. I did.

Q. Can you fix the date of that conversation?

A. December 4, 1953.

Q. Where did that conversation occur?

A. In Mr. Hallberg's automobile.

Q. What was the occasion for your being in his automobile?

A. I was taking Mr. Hallberg to the various buildings and introducing him to the managers, and he was picking up the money that the managers had on hand.

No. 14702

United States
Court of Appeals
for the Ninth Circuit

FREDERICK I. RICHMAN, Appellant,
vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

LYDA TIDWELL, Appellant,
vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

Transcript of Record

In Three Volumes

VOLUME III.

(Pages 649 to 974, inclusive.)

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FILED

SEP 13 1955



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In Three Volumes
VOLUME III.

(Pages 649 to 974, inclusive.)

Appeals from the United States District Court for the Southern
District of California, Central Division

(Testimony of Frederick I. Richman.)

Q. What did Mr. Hallberg say concerning that subject [425] matter and what did you say concerning that subject matter of his experience in managing apartment buildings?

A. I asked Mr. Hallberg if he was in the business of operating multiple housing. He said yes, he was.

I said, "How big are your houses?"

He said he had a 40-unit.

I said, "Where?"

He said, "On East Colorado."

I said, "Pasadena?" He said, "Yes."

I said, "What is the name of the building? I thought of buying some properties over there once and I might know it."

Q. You are relating the conversation?

A. Yes. Mr. Hallberg said, "Well, I am not going to talk any more with you. I have been told **not** to discuss myself with you."

So I excused the conversation and changed it to the weather.

Q. Now, directing your attention to the Western Arms concerning the refrigeration system and the incident of February 17, 1954, did you receive a telephone call concerning that subject matter?

A. I did.

Q. From whom? A. Mrs. Kennedy. [426]

Q. She was the witness that previously testified here?

A. She was the manager of the Western Arms. She previously testified here.

(Testimony of Frederick I. Richman.)

Q. What was said by that agent of the Receiver?

Mr. Whyte: Again, just for the purpose of the record, I would like to object to this as calling for hearsay testimony.

The Court: You dispute she was an agent?

Mr. Whyte: No, I don't dispute that, your Honor, but again I don't think that her conversations with Mr. Richman are within the scope of her employment as Mr. Hallberg's agent.

The Court: Whether they were or were not will have to be determined somewhat by the nature of the conversation. You might say a lot of things that do not bear upon a particular relationship, and then you might say some things of which there is a question whether they do or whether they do not.

It is difficult, without hearing what was said, to determine whether it was pursuant to the agency or was in derogation of it. So the objection is overruled, with the comment the court will have to scrutinize it with a critical eye.

The Witness: Mrs. Kennedy stated she had a bad break in the refrigeration system. That she had tried to get hold of Mr. Hallberg, had tried to get hold of Miss Cosgrove and wasn't successful.

There was gas leaking in the building, and what should [427] be done. And I told Mrs. Kennedy I had no say in the operation of the buildings, that I didn't want to be put in a position where I could be criticized, but the first concern was to see that the guests in the building were taken care of, be-

(Testimony of Frederick I. Richman.)

cause they were producing the rents that kept the trust going.

And that I thought she was entirely within her rights, if he had not changed the refrigeration company, that had been on previously, or had given her any statements as to it to change, for her to call that refrigeration company and tell them to do whatever was necessary to protect the tenants in the building and protect the income from the property.

Q. (By Mr. Enright): What day was that?

A. That was about the 17th of February.

Q. Did you receive another call the following day? A. I did.

Q. From whom? A. Mrs. Kennedy.

Q. The substance of that call was what?

A. She was still unable to get in touch with Mr. Hallberg or Miss Crogrove. There appeared to be nobody at the office.

That she had asked for Mr. Harrison, but had been told Mr. Harrison was no longer working for the Receiver. And the matter was still causing considerable trouble and what [428] should she do.

I again repeated I did not want to be in the position of advising her anything, and the only thing for her to do—and I thought she would be protected—was to carry through with the service company that I had formerly used for the trust, and which evidently Mr. Hallberg was continuing to use.

Q. Did you receive a call from that service company? A. I did.

(Testimony of Frederick I. Richman.)

Q. Do you know whether or not the agents of the Receiver used that service company?

A. They used that service company for a period of time, and then discharged that service company.

The service company called me a couple of times, wanting to know what to do. They had been unable to get in touch with Mr. Hallberg or Miss Cosgrove.

Q. Now, directing your attention to the Oliver Cromwell payment of January 1, 1954, did you receive telephone calls from a Mrs. O'Neal of the Pacific Mortgage Company concerning that subject matter of payment? A. I did.

Q. What dates?

A. On January 14, 1954, I received a call relative to the nonpayment of the January 1, '54 payment on the Oliver Cromwell. [429]

Q. That is the payment you testified that showed the check cleared on January 18th, is that it?

A. That is correct.

Q. Directing your attention——

A. After receiving that call I endeavored to contact Mr. Hallberg, but could not reach him. I contacted Mr. Harrison, and he stated the check was drawn and was on Mr. Hallberg's desk, waiting for him to come in to sign the check and send it through.

Mr. Whyte: Again I want to move that the answer with respect to what was told him by Mrs. O'Neal at the mortgage company is purely hearsay.

(Testimony of Frederick I. Richman.)

There has been no showing she was an agent of the Receiver.

The Court: If that is in the form of a motion to strike, the court will grant it.

Mr. Whyte: That is right, it is a motion.

The Witness: I received on January 11th a notice from Pacific Mortgage of a reminder that the mortgage payment of \$2,027.25 due on 1-1-54 had not been paid.

Q. (By Mr. Enright): Is this the notice?

A. That is the notice.

Mr. Enright: We will offer this in evidence, partially in corroboration of the agent Harrison's statement that the check was lying on Mr. Hallberg's desk; that portion of his testimony was not stricken.

The Court: Received.

The Witness: I called Mr. Harrison after receiving that notice.

The Clerk: Defendants' F in evidence.

(The document referred to was marked Defendants' Exhibit F and was received in evidence.)

The Witness: Defendants' Exhibit F. And then I called him again after receiving the telephone call from Mrs. O'Neil on January 14th.

Q. (By Mr. Enright): Directing your attention to the Brookshire payment book, was there such a book recording payments on that trust deed note? I assume it to be—

A. Yes, there was.

Q. Now, you received correspondence or phone

(Testimony of Frederick I. Richman.)

calls concerning the action of the agent or nonaction of the agent on that subject matter?

A. I did.

Q. When?

A. The payment was due on the 15th of the month. On December 15th the payment came into my office. I transmitted it to Mr. Hallberg by envelope.

On or about January 7th I received a note from Mrs. Brookshire that the payment had not been—the payment book had not been received, and requested that it be mailed to her so that they could send in their payment on the next—the [431] 15th of January.

I sent that note to Mr. Hallberg.

Mr. Whyte: I am going to move to strike his communications, either in the form of notes or otherwise, from Mrs. Brookshire. There is no showing she is an agent of the Receiver. Here again it is purely hearsay.

The Court: The motion is granted.

Mr. Enright: The offer of the evidence is for the purpose of showing nonaction or failure of the Receiver to perform his duties.

Q. (By Mr. Enright): Do you have the notice? I believe that is base evidence. Mr. Richman, do you have the note? Or did you forward that to Mr. Hallberg?

A. Yes, I have the note. I am sorry, I misstated myself before. I called Harrison, on receipt of this, and asked for Mr. Hallberg and he was not in.

(Testimony of Frederick I. Richman.)

Q. What did Mr. Harrison say when you talked to him, the agent of the Receiver?

A. Mr. Harrison stated that Mr. Hallberg had not released the return of that book, but he would bring it to Mr. Hallberg's attention the next time he saw Mr. Hallberg, and would send it back to her.

Q. That was shortly after January 7, 1954?

A. Yes.

Q. That pertained to the December 15, 1953 payment? [432]

The Court: On what obligation?

Q. (By Mr. Enright): Could you answer the court's question?

A. On a deed of trust that was owned by Richman Trust; trust deed receivable.

Mr. Enright: I will offer in evidence this January 7, 1954——

Mr. Whyte: To which objection is made on the ground it is hearsay.

The Court: Let me see it. It will be received as a document received in the course of business.

The Clerk: Defendants' G in evidence.

(The document referred to was marked Defendants' Exhibit G and was received in evidence.)

Q. (By Mr. Enright): Now, directing your attention to Arden Farms commission check, particularly, I believe, one of December 18, 1953, do you have such a transaction in mind? A. I do.

Q. State what occurred in connection with that transaction concerning the Receiver's action?

(Testimony of Frederick I. Richman.)

A. The Arden Farms sent through a check for five per cent of the milk bill at the Canterbury between the 15th and 20th of each month.

The check was made payable to F. I. Richman individually, because they would not make it payable to the trust. [433]

Mr. Whyte: Just a moment. I am going to move to strike that as a pure conclusion of the witness and move to strike the rest of the testimony, as there is no sufficient foundation laid. I can't tell where this information was coming from, or anything of the sort, so I can make a proper objection.

The Court: The motion is granted. I think it is probably a relevant source of inquiry, but we don't have enough foundation.

I know what you are driving at, Mr. Enright.

Q. (By Mr. Enright): During the period January 1, 1946 to November 30, 1953, did you as agent for the trust have a continuing transaction with Arden Farms?

A. Not from your starting date. From the time of the acquisition of the Canterbury to the end of November I had a continuing transaction with Arden Farms.

Q. When did you acquire, as agent for the trust, the Canterbury?

A. The trust acquired the Canterbury, I believe it was October 1948.

Q. From that date to November 30, 1953, did Arden Farms furnish the milk, as best you now recollect, for the Canterbury?

(Testimony of Frederick I. Richman.)

A. For the guests of the Canterbury that desired to have the milk delivered to their door by the Arden delivery, [434] it did.

Q. During that period of time, up to November 30, 1953, was there a commission payable to the trust on account of milk delivered by Arden to the Canterbury Apartments?

Mr. Whyte: I am going to object to this line of testimony as being immaterial and irrelevant. What may have taken place under Mr. Richman's regime, so far as his dealing with Arden Farms is concerned, doesn't seem to me to prove or disprove any issue with respect to the Receiver.

The Court: But it might provide a foundation for evidence at a later time. The objection is overruled.

The Witness: I received five per cent of the previous month's bill, a check from them between the 15th and 20th of each month.

Q. (By Mr. Enright): Had you been receiving that for several months before November 30, 1953?

A. Ever since the acquisition of the Canterbury.

Q. Now, did you receive a communication from Arden Farms of any form?

A. On December 18, 1953, I received a check from Arden Farms in the amount of \$5.69.

Q. What did you do with it?

A. Put it in an envelope and mailed it to Roy Hallberg, Receiver, 418 South Normandie, Los Angeles 5.

Q. And then what happened? [435]

(Testimony of Frederick I. Richman.)

A. On about January 8th I received the check back, together with a notation dated 1-7-54:

“Mr. Richman:

“Will you please endorse the Arden Farms check attached and return to me? Thanks.

“Roy E. Hallberg.”

It was all typewritten; not even signed by Mr. Hallberg.

Q. Now, directing your attention to the gas utility company that furnished you gas services, will you state whether, or, which utility of our Los Angeles Utilities furnished gas to these five apartment houses?

A. Southern California Gas Company furnished gas to all five buildings.

Q. On or about January 8, 1954, did you receive a communication from the Southern California Gas Company concerning payment of the gas utility bills?

A. I received an audited request at that time from the Gas Company, showing it did not call for a reply or payment, but stated—showing that the account, the bill for the period ended December 14th of \$81.78 was still outstanding.

Q. That is as of January 8, 1954?

A. That is correct. I contacted Mr. Harrison and verified it, and did not send it through, because it was merely an accounting audit. [436]

Q. Now, as to the water and power bills.

A. Well, also on January 21st I received the

(Testimony of Frederick I. Richman.)

bill from the Gas Company for the Canterbury for the period December 14th to January 14th in the amount of \$89.39, and showing that the bill for the period from November 12th to December 14th, in the amount of \$81.78 was still unpaid, making a total amount due of \$171.17 as of January 21, 1954.

Q. Now, directing your attention to the power and water utilities, did you receive communications from those concerning the Receiver's incurring or not incurring those bills? A. I did.

Q. Recite the dates.

A. January 15, 1954, the water, light and power bill for the Oliver Cromwell, for the period of December 7th to January 7th, was received by me.

I transmitted it to Mr. Hallberg, and attached to it was a sticker, "Your previous bill may have been overlooked. Please give this statement your prompt attention."

Also, I had received a gas bill for the Fountain Manor for the period December 7th to January 7th in the amount of \$207.45, showing the bill for the period November 4th to December 7th, in the amount of \$199.66 was still unpaid; for a total of \$407.11.

Q. That is as of January 15, 1954? [437]

A. Yes.

Q. Those are utilities as of November, which were yet unpaid? A. Yes.

Q. Now, directing your attention to the LaLoma Apartments and the phone bills.

A. On January 19, 1954, I received both phone

(Testimony of Frederick I. Richman.)

bills for the LaLoma, for the period as of January 11, 1954, and both bills—that is, the house bill and the manager's phone showed that the December 11, 1953, phone bill of both the manager and the house was unpaid.

The manager's phone was \$4.40 for the current month, and the previous unpaid month was \$4.11.

The house phone was \$8.31 for the current month, and \$6.33 for the previous month, which had not been paid.

The utility bills and phone bills were all in my name, and I received numerous calls from them relative to non—from the utility companies relative to the nonpayment of the bills.

The Receiver evidently made no attempt to transfer the service into his name as Receiver.

Q. Directing your attention to Barker Bros., did you receive a notice from them sometime in January 1954? A. I did, January 18, 1954.

Q. What was that bill for and for what period of time? [438]

A. The bill was for—the notice was for \$603.34 relative to purchases made in November, and that was one of the bills I had delivered to Mr. Hallberg as being unpaid when he took over the operation of the trust, about December 1, 1953.

Q. Did your previous testimony cover the Canterbury gas bills? I guess it did, didn't it?

A. Yes, but on January 26, 1954, I received a telephone call from H. B. Hanson, credit office of the Telephone Company, relative to the Canterbury

(Testimony of Frederick I. Richman.)

phone bill, in the amount of \$278.44 being unpaid.

Q. I will direct your attention to compensation insurance policy. Did you receive a request upon that item? A. I did.

Q. What date?

A. I received the blank statement to put on the payroll figures about December 28, 1953. I sent that to Mr. Hallberg, with the request that he put on the figures for the trust for the period of October and November 1953.

And then I would send it to the company, and then would be able to compute the amount of the insurance deposit premium which goes to the trust and would repay the trust with.

Q. The Receiver had then taken possession of all the books and records for the months of October and November, is [439] that right?

A. That is correct. I didn't have any information relative to the amount of payroll for November or October, which I needed for that audit.

Q. Did you receive a reply from the Receiver?

A. I did not. On January 22nd I received a second request from the insurance company. I transmitted that and talked with Mr. Harrison.

He stated that he would try to get it out as quickly as he could, but he would have to discuss it with Mr. Hallberg and he didn't see Mr. Hallberg very frequently.

Q. Directing your attention to a deposit, I believe, shown by the Receiver's account, in the sum

(Testimony of Frederick I. Richman.)

of \$400.00 on account of compensation insurance, do you have that subject matter in mind?

A. Yes.

Q. There is such an item shown?

A. Yes, the compensation insurance companies require a premium deposit. In this instance of \$400.00, to write the policy, so the receiver's books reflect—and I was present when he ordered the policy from Mr. Dulley, and was told it would be \$400.00 deposit premium on the compensation policy, which he had to take out in his name as Receiver.

Q. Does the Receiver's accounting in any manner account for the refund, if any, or dispose of that \$400.00 item, other [440] than being a charge?

Mr. Whyte: I object to that. The Receiver's account is the best evidence and will speak for itself.

The Witness: There is nothing in the Receiver's account showing any audit on that compensation or any return premium on that.

The Court: They seem to be going along with your objection, Mr. Whyte; Receiver's account now.

Q. (By Mr. Enright): Have you examined the account? A. I have.

Q. Is there any place in here where there has been a refund or an accounting in any manner on the \$400.00? A. There has not.

Q. Are you familiar with the payroll incurred by the Receiver while he was in possession of the property? A. I am.

Q. Are you familiar with rates being paid for

(Testimony of Frederick I. Richman.)

such payroll during comparable periods of time, going back so far as January 1, 1946, for example?

Mr. Whyte: Miss Reporter, will you read the question? I didn't catch it.

(The question was read.)

Mr. Whyte: What payroll is that?

Mr. Enright: The payroll for which Mr. Hallberg deposited \$400.00. [441]

Mr. Whyte: I understood that \$400.00 to be an insurance deposit. I don't quite catch the connection.

Mr. Enright: Compensation insurance.

The Court: I think they are proving the payment on premium for workmen's compensation coverage for employees of the trust.

Is that right?

Mr. Enright: That is correct, your Honor.

The Court: What is the point you are making, so Mr. Whyte can get it?

Mr. Enright: I am endeavoring to introduce the evidence which will demonstrate there has been no accounting or settlement of the account by the Receiver, first.

And, second, we will produce evidence there is approximately \$150.00 refundable on account of the \$400.00 deposit; another action or nonaction on the part of the Receiver.

Mr. Camusi: I am going to make an objection to this line of questioning because it affects the plaintiff Tidwell in this action.

We are not here to protect the Receiver, but, at

(Testimony of Frederick I. Richman.)

the same time, we are interested in any charges made along the line of refund.

I think we should be fair to the Receiver. We called him in here one morning and said, "Plaintiff and defendant have reached an agreement. You give over possession this [442] week end. And the order specifically states you turn over everything to Mrs. Tidwell and her agents, other than cash in bank and under your control."

Now, at that time, I will stipulate for the purposes of this argument, that the Receiver had not used up the whole \$400.00 he had been paid—that the Receiver had not used up the whole \$400.00 he had paid in this five-month period.

Now, we have made an agreement. We bought out the assets of the trust as of March 1st.

Now, if they have any complaints on that, that is against us. That is something that can be decided with us.

We can't just kick a Receiver out over a week end and then say, "You failed to make an accounting of any moneys that hadn't been used up."

The point is he paid the money out and he shows it in his accounting. I think the matter speaks for itself.

If they think, Defendant Richman thinks he is entitled to any of this money, that is something for the plaintiff and defendant to fight out in their lawsuit.

Furthermore, I am interested in anything that

(Testimony of Frederick I. Richman.)

will not jeopardize anyone's rights, and will save some time.

The Court: Well, I rather gather from the line of testimony that Mr. Enright is endeavoring to show us the practice by the Receiver. Is that right?

Mr. Enright: That is one point. [443]

The Court: To that end the door has to be opened to receive testimony which might be relevant in that field, whether it does or does not prove the implied accusations, so the objection will be overruled.

Q. (By Mr. Enright): My desire, Mr. Richman, is to ascertain now whether or not you have made an audit, based upon your experience, as you previously testified, as to the amount of money refundable under this \$400.00. A. I have.

Q. What is the amount?

A. The compensation policies run differently from others.

Mr. Whyte: I am going to object to this. There is no sufficient foundation laid for his knowing all the facts which will indicate——

The Court: Objection sustained. No proper foundation.

Mr. Whyte: ——what the amount will be.

Q. (By Mr. Enright): Did you examine the books and records of the Receiver? A. Yes.

Q. Did you examine his accounting?

A. I have.

Q. Did you ascertain the amount of money he paid on account of payroll?

(Testimony of Frederick I. Richman.)

A. I have; it is in his report. [444]

Q. Did you examine to ascertain the rate of charges for workmen's compensation insurance?

A. I have.

Q. State the amount that accrued.

A. The amount accrued——

Mr. Camusi: I object to that on the ground it is still not the best evidence. I don't want this evidence coming in. I want to see the relevant records.

The Court: Objection sustained.

Mr. Enright: You want to see the records.

Q. (By Mr. Enright): Will you get the records, Mr. Richman?

The Witness: Do you want to take a recess? It is going to take me some time to dig them out.

The Court: All right. We will recess until the witness finds the records.

(Short recess taken.)

Mr. Whyte: Your Honor, I wonder if I might have permission to ask Mr. Richman a few questions on voir dire, with respect to this and so-called insurance refund.

I think I can show it has no materiality here, if I can be permitted to ask the witness a question or two.

The Court: All right. Go ahead. [445]

Voir Dire Examination

Q. (By Mr. Whyte): Mr. Richman, you mentioned a figure, I believe it was \$400.00, in the form

(Testimony of Frederick I. Richman.)

of a refund from an insurance company on account of compensation insurance, is that correct, sir?

A. Not a refund of \$400.00.

Q. How much was the refund?

A. I figure the refund should be in the neighborhood of \$158.00.

Q. Is that the item which you said was not shown in the Receiver's report?

A. That is correct.

Q. When did that refund—when was that item refunded to the Receiver, if you know?

A. I don't know whether it has been refunded. It would be refunded until the Receiver filed his payroll figures for the three months of his operation. The company computed the amount of premium upon his payroll figures, and then he would ask for a refund.

Q. You say you don't know whether it has been refunded or not?

A. No. It does not show in his report at all.

Q. If it had not been refunded, naturally, it would not show in the Receiver's report, would it?

A. That is correct, but it is an amount that should belong to the Receiver. It was money deposited there, that hasn't been used up and is returnable to the Receiver.

The \$400.00 deposit does show on his books, as having been paid out.

Q. You are familiar with the fact that the Receiver's report covers the period from December,

(Testimony of Frederick I. Richman.)

roughly December 1, '53, to February 28, 1954, are you not? A. That is correct.

Q. Then any transactions occurring outside of that period would not be shown in the Receiver's report, would they?

A. No, the Receiver's report also shows many checks dated March 8, 1954, after the period of his report.

Q. You refer to the many checks which you show in the Receiver's report. Will you direct my attention to those, please, Mr. Richman?

A. Yes. They are on Exhibit C, "Disbursements Made by the Receiver, as Directed by the Court, Covering Liabilities Incurred Prior to February 28, 1954, but not Paid Until After that Date," which is three pages of them.

And then the recapitulation at the bottom of page 3 shows the amounts according to the three months operation of \$26,819.19.

The payments as listed above of \$6,121.40, and that means [447] the payments which were made after February 28, 1954.

Then it shows the balance as of March 10, 1954, of \$20,697.71.

Q. Schedule C you have referred to is listed, is restricted to disbursements made on account of liabilities incurred during the month of February 1954, is it not, Mr. Richman?

A. That is what it states there, yes.

Q. And a refund on account of insurance is not a liability incurred, is it, Mr. Richman?

(Testimony of Frederick I. Richman.)

A. Yes. The insurance premium was due and payable for the period of time of the three months' operation, subject to an audit.

Q. Do I understand you correctly as telling me that when the receivership or successors to the Receiver have a refund coming from the insurance company, that that is a liability which they have incurred?

A. No, not a liability they incurred, but their payroll compensation insurance for the three months' period of time is a liability they have incurred in the receivership.

Mr. Whyte: I think I have developed sufficiently to show your Honor that the omission of any refunds from Mr. Hallberg's report is completely explicable upon the ground it wasn't received during the period which the report covers and, in fact, the witness doesn't even know it yet has been [448] received.

The Court: Treating that as an objection, the objection is sustained. Now, it would be proper to show that, if it be the fact, that the Receiver was entitled to a refund, that the Receiver did not apply for the refund.

That under the contract or the rights as fixed by law the time within which the refund could be obtained has expired.

You will have to make a showing along such avenues as will develop those facts, rather than this attempted experting of insurance refunds by a lay witness.

(Testimony of Frederick I. Richman.)

Mr. Camusi: I would like the record to state my objection perhaps a little different way.

The Court: To what are you going to object, the question?

Mr. Camusi: The whole line.

The Court: The court's ruling or what?

Mr. Camusi: The whole line of questioning, your Honor. I don't think they can make out a case on the bare facts in this case, because this court order, signed by your Honor that Friday morning, which directed the turning over of the assets to the plaintiff Mrs. Tidwell on Sunday afternoon, said all assets.

This potential refund at that time was an asset. It was turned over to Mrs. Tidwell.

If they think they have some interest in that, that is [449] something we will fight out on our own. It is our position they haven't.

The Court: Let's mark that down as one item to be considered in the pretrial that is coming up.

Mr. Camusi: That is right. You can't come here and attack the Receiver for not having collected this. We wouldn't have permitted it, because, under order of court and our stipulation with the defendant Frederick Richman, it was conceded on all sides that all assets, except money in the bank or under the control of Receiver at that time, were to be turned over to the plaintiff, and they were turned over.

The Witness: The only way that refunds on

(Testimony of Frederick I. Richman.)

deposit could come back would be to Mr. Hallberg. The policy is in Mr. Hallberg's name.

The Court: His statement doesn't call for a statement from you. There was no question for you to make a statement to.

Mr. Enright: The amount of \$125.00——

Mr. Camusi: I will stipulate, to save time—we are in the process of checking that—if Defendant Richman thinks he has any right to it, that refund, he will have ample opportunity to make that claim in his fight with us.

The Court: That is where I think we should consider it, instead of considering it with this Receiver, who was subject to an order. [450]

The Witness: That check will come back in the name of the Receiver and will be endorsed by him over to you and your client, or he will send an authorization to the company to give it to you, according to the insurance rules. Otherwise, it will come directly back to the policyholder, who is Mr. Hallberg.

Q. (By Mr. Enright): Mr. Richman, have you examined the books and records and correspondence of the Receiver?

A. To a certain extent, yes.

Q. Did you find anything in there anywhere pertaining to the Receiver making an application for a refund——

A. No.

Q. ——or report of any kind——

A. No.

Q. ——on this subject?

A. No.

Mr. Whyte: Again I am going to object to this.

(Testimony of Frederick I. Richman.)

There is no foundation laid here to show under what circumstances the Receiver would have to make an application. I don't see the materiality.

The Court: He can only ask one thing at a time. Objection overruled.

I do think, Mr. Enright, this could be pursued between Mrs. Tidwell and Mr. Richman, rather than on this fixing of a Receiver's compensation. [451]

Mr. Enright: I bring it out at this time, your Honor, primarily in response to the conclusion of the Receiver he was so experienced in this field, he had conducted this business so efficiently. Here is a fine example, in my opinion, at least, as to some of his activities.

Q. (By Mr. Enright): You did go over all the books and records and found no application of any kind pertaining to refund for workmen's compensation insurance? A. That is correct.

Q. That will be a matter of auditing, I suppose. Now, directing your attention to public liability insurance, and particularly Mr. Hallberg's testimony that the public liability insurance insured your property, as distinguished from property of the trust.

Did you examine the records pertaining to that insurance? A. I did.

Q. Was there any of your property covered by that insurance? A. There was not.

Q. Did Mr. Hallberg do anything pertaining to that insurance with reference to the premiums?

A. Yes. He stopped payment on the check of

(Testimony of Frederick I. Richman.)

the trust I had sent out for the payment of the premium on there, and then at a subsequent time he issued a check, No. 207, dated [452] January 10, 1954, to Robert H. Dulley Company, for \$3,827.66, being marked in the voucher part "12-1-53. CL 13828 for \$3,427.66." That is the amount of the liability policy.

And also "12-2-53, C—" which stands for compensation—" \$480.00, 12912."

That was the \$400.00 deposit on the compensation policy, which he took out for himself.

The check bears the stamp of Union Bank perforation, as having been paid on 1-18-54.

The public liability policy was not rewritten in any way. It was the identical policy that Mr. Dulley had submitted to me and which I turned over to the Receiver on, I believe, December 4, 1953.

Q. Now, directing your attention to the subject matter of fiduciary income tax return, and particularly to Mr. Hallberg's testimony he had two conferences at the Revenue Department, on how to prepare that return or in connection with the return, did you receive a statement from the Receiver as to the amount of moneys that had to be received by you as beneficiary and had been received by the plaintiff as a beneficiary?

A. Well, I didn't receive any statement from Mr. Hallberg. I received some sheets that professed to give the 1953 year's operation of the Richman trust.

(Testimony of Frederick I. Richman.)

Q. Did you locate the copy of the fiduciary return [453] prepared by the Receiver?

A. Yes, I have in the record, since no copy was ever sent to me for my information.

Q. May we have it at this time and have it marked for identification? A. Yes.

Mr. Enright: May this be marked next in order for identification?

I would like to offer it in evidence, if there is not going to be objection.

Mr. Whyte: No.

The Court: Received.

The Clerk: Defendants' H in evidence.

(The document referred to was marked Defendants' Exhibit H and was received in evidence.)

DEFENDANTS' EXHIBIT H

FORM 1041

U. S. Treasury Department
Internal Revenue ServiceU. S. FIDUCIARY INCOME TAX RETURN
(FOR ESTATES AND TRUSTS)
For Calendar Year 1953

1953

Do not write in these spaces

Serial
No.

(Cashier's Stamp)

or taxable year beginning Jan. 1, 1953, and ending January 1, 1954

(PRINT NAMES AND ADDRESS PLAINLY BELOW)

Name of
Estate or Trust THE TRUST OF R. L. Callahan, decedent
CHUCK (V) WHETHER ESTATE ☐ OR TRUST ☒ as of Dec. 1, 1953Name and
Address of
Fiduciary
Frederick F. Johnson
117 South Hill StreetLos Angeles 13, CaliforniaItem and
Instruction No.

INCOME

1. Dividends.....	\$		
2. Interest on bank deposits, notes, corporation bonds, etc. (except interest to be reported in item 3).....		125.00	
3. Interest on tax-free covenant bonds upon which a Federal income tax was paid at source.....			
4. Interest on Government obligations, etc., unless wholly exempt from tax.....			
5. Income from partnerships, and other fiduciaries (from Schedule A).....			
6. Rents and royalties (from Schedule B).....		90,796.13	
7. (a) Net gain (or loss) from sale or exchange of capital assets (from Schedule C).....			
(b) Net gain (or loss) from sale or exchange of property other than capital assets (from Schedule D).....			
8. Profit (or loss) from trade or business. (Attach statement).....			
9. Other income. (State nature of income) <u>Ord. cent. excess. INTOLL</u> <u>eductions</u>		3.56	
10. Total income in items 1 to 9.....		\$ 90,926.13	13
DEDUCTIONS			
11. Interest. (Explain in Schedule F).....	\$		
12. Taxes. (Explain in Schedule F).....			
13. Other deductions authorized by law. (Explain in Schedule F).....		36,886.89	
14. Total deductions in items 11 to 13.....		\$ 36,886.89	89
15. Balance (item 10 less item 14).....		\$ 54,039.24	24
16. Less: Amount distributable to beneficiaries (total of columns 3 and 4, Schedule G).....		21,039.24	54
17. Net income taxable to fiduciary (item 15 less item 16).....		\$ one	one

COMPUTATION OF TAX FOR CALENDAR YEAR 1953
(For Other Taxable Years Attach Form 1041PV)

18. Net income (item 17, above).....	\$	none	
19. Less: Exemption (\$600 for an estate; \$100 for a trust).....		100.00	00
20. Balance (item 18 less item 19).....	\$	none	
21. Tax on amount in item 20. See Tax Rate Schedule in Instruction 21. (If item 18 includes partially tax-exempt interest, see Instruction 21).....		none	
22. If alternative tax computation is made, enter tax from line 23, Schedule C.....		none	
23. Less: Fiduciary's share of income tax paid to a foreign country or U. S. possession. (Attach Form 1116).....	\$		none
24. Fiduciary's share of income tax paid at source on tax-free covenant bond interest.....			
25. Total of items 23 and 24.....			
26. Balance of tax (subtract item 25 from item 21 or item 22, whichever is applicable).....	\$	none	



Defendants' Exhibit II—(Continued)

FORMER RICHMAN TRUST PROPERTIES

RECEIPIENTMENT OF INCOME

December 31, 1953

Net Income from Properties (See Attached Schedule)	\$90,796.13
Interest Earned	126.44
Miscellaneous Income (See Footnote)	<u>1.86</u>
Gross Income	\$90,926.43

Expenses:

General Expense	\$	459.99	
Insurance -			
Compensation	\$	713.13	
Public Liability		<u>787.76</u>	1,500.89
Management Fee	\$	34,429.63	
Office Salaries		475.00	
Payroll Taxes		<u>21.18</u>	<u>14,926.01</u>
Total Expenses			<u>\$16,886.89</u>
Net Income			<u>\$54,039.54</u>

*Odd-cent excess payroll
tax deductions in 1953.

Withdrawals:

Lyde R. Tidwell	\$	19,887.51	
Frederick I. Richman		<u>19,887.50</u>	\$39,775.01

<u>Undistributed Income</u>			<u>14,264.53</u>
			<u>\$54,039.54</u>

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1900

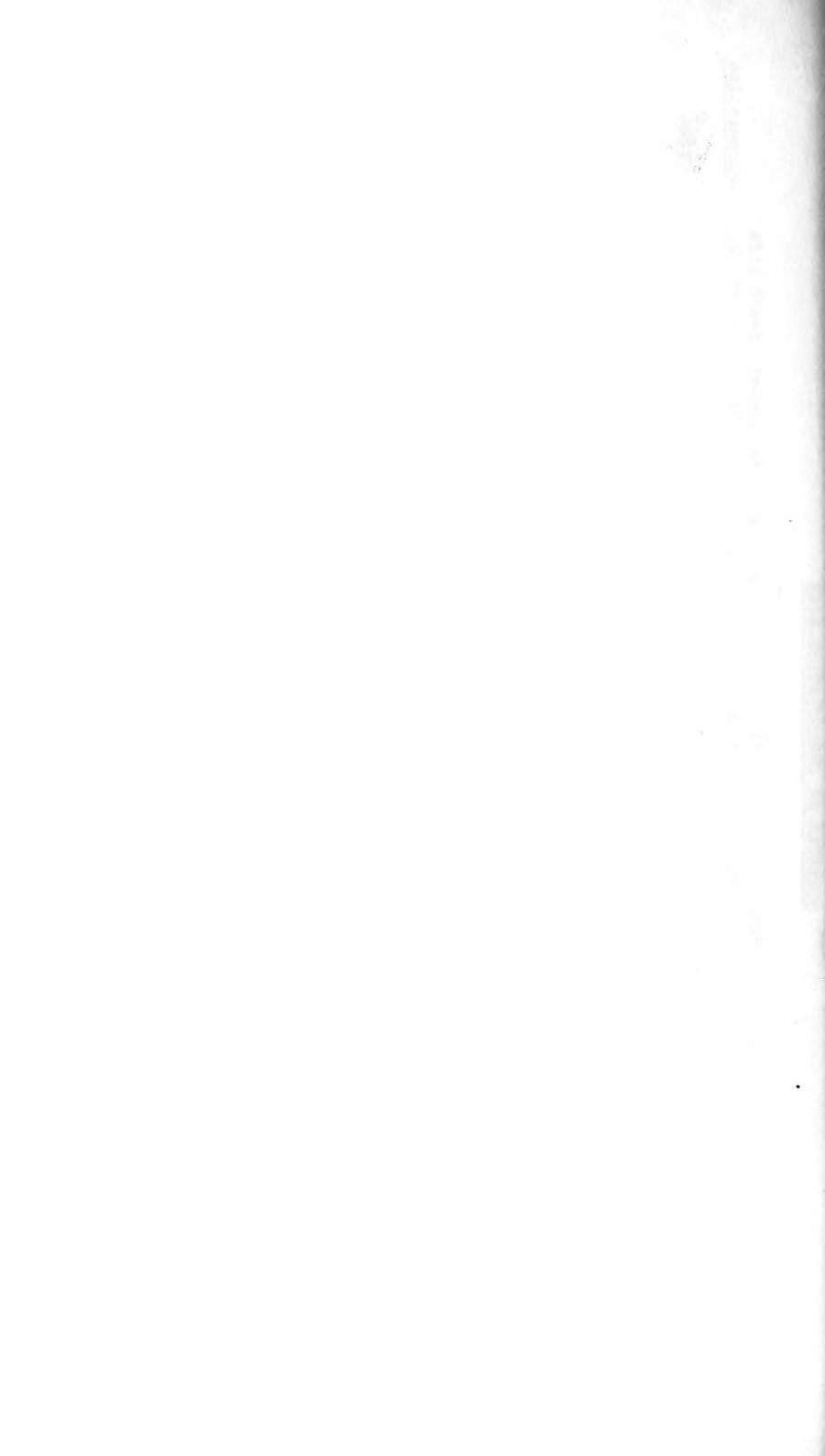
FOUNDER RICHMAN TRUST PROPERTIESACCOUNTING OF INCOME AND EXPENDITURES FOR THE YEAR 1953

	<u>Centerbury</u>	<u>Mountain</u>	<u>Is</u>	<u>Oliver</u>	<u>Western</u>	<u>Total</u>
	<u>Income</u>	<u>Income</u>	<u>Loss</u>	<u>Grosswell</u>	<u>Area</u>	
Income	\$ 101,271.44	\$ 90,274.22	\$ 22,165.05	\$ 91,961.66	\$ 59,380.01	\$ 376,752.38
<u>Expenses:</u>						
Depreciation	\$ 27,882.97	\$ 17,576.14	\$ 10,111.57	\$ 25,731.72	\$ 10,440.21	\$ 91,742.61
Licenses & Taxes	8,831.19	7,566.32	2,684.30	8,312.63	5,347.84	32,742.28
Insurance	669.34	645.27	196.22	1,378.89	177.60	3,070.32
Interest				9,002.53		9,002.53
Maint. & Repairs	6,455.51	6,719.44	2,937.72	5,904.37	4,653.66	26,670.70
Utilities	7,955.12	8,597.75	2,719.73	8,001.32	3,741.82	31,018.77
Laundry	3,895.57	3,547.57	1,017.11	3,040.15	1,833.27	13,333.67
Salaries	20,224.63	19,644.57	3,705.36	19,168.13	8,223.21	70,966.20
Payroll Taxes	892.78	884.02	166.74	802.55	379.13	3,176.22
Miscellaneous	2,203.58	462.72	53.50	1,153.12	314.96	4,194.88
<u>Total Expenses</u>	<u>\$ 79,015.69</u>	<u>\$ 65,644.91</u>	<u>\$ 21,597.23</u>	<u>\$ 82,557.41</u>	<u>\$ 35,104.70</u>	<u>\$ 285,919.92</u>
<u>Net Operating Profit</u>	<u>\$ 24,255.75</u>	<u>\$ 24,629.29</u>	<u>\$ 8,767.80</u>	<u>\$ 9,404.25</u>	<u>\$ 23,775.31</u>	<u>\$ 90,832.40</u>
<u>Less:</u>						
Taxes--Lern Co. Acres				2.53		
" --Sedera County				18.14		
" --San Bernardino Acres				15.30		
<u>Net Income from Properties</u>						<u>\$ 90,796.11</u>



SCHEDULE OF DEPRECIATION-1953

	<u>Date Acquired</u>	<u>Cost of Improvement</u>	<u>Prior Depreciation</u>	<u>Remaining Cost</u>	<u>Estimated Life</u>	<u>Est'd Life 1st of Yr.</u>	<u>Depreciation</u>
<u>Canterbury Apt. Hotel</u>							
Apartment Hotel	10-1-48	\$ 347,733.05	\$ 88,671.15	\$ 259,061.90	16 2/3 Yrs.	12 5/12 Yrs.	\$ 16,647.72
Furniture	10-1-48	35,000.00	17,850.00	17,150.00	8 1/3 "	4 1/12 "	4,200.00
Improvements	Var.1950-1-2-3	32,011.92	8,190.76	23,821.16	4 1/6 "	Various	7,035.25
<u>Fountain Manor Apt.Hotel</u>							
Apartment Hotel	1-15-44	178,359.98	77,890.42	100,469.56	20 "	11 "	6,809.24
Furniture	1-15-44)						
Improvements	9-25-48)	38,589.55	36,830.90	1,758.65	8 1/3 "	4 1/12 "	430.80
Garage	Var.1950-1-2-3	48,295.68	14,025.41	34,270.27	4 1/6 "	Various	10,081.64
	1-15-44	6,666.67	2,985.01	3,681.66	20 "	11 "	254.46
<u>La Loma Apartments</u>							
Apartment Hotel	5-20-49	140,000.00	30,100.00	109,900.00	16 2/3 "	13 1/12 "	6,842.52
Furniture	5-20-49	10,000.00	4,300.00	5,700.00	8 1/3 "	4 3/4 "	1,200.00
Improvements	Var.1950-1-2-3	8,155.34	2,668.88	5,486.46	4 1/6 "	Various	2,069.05
<u>Oliver Cronwell Apt.Hotel</u>							
Apartment Hotel	9-1-50	315,051.18	44,107.00	270,944.18	16 2/3 "	14 1/3 "	15,988.80
Furniture	9-1-50	35,000.00	9,800.00	25,200.00	8 1/3 "	6 "	4,200.00
Improvements	Var.1950-1-2-3	25,956.09	6,687.23	19,268.86	4 1/6 "	Various	5,542.92
<u>Western Arms Apt. Hotel</u>							
Apartment Hotel	5-7-41	121,014.48	56,489.70	64,524.78	25 "	13 1/3 "	3,973.56
Improvements	Var.1950-1-2-3	28,863.11	8,470.05	20,393.06	4 1/6 "	Various	6,466.65
		\$ 1,370,697.05	\$ 409,066.51	\$ 961,630.54			\$ 91,742.61



Defendants' Exhibit H—(Continued)

Page 4

Schedule G.—BENEFICIARIES' SHARES OF INCOME AND CREDITS. (Include as beneficiaries persons to whom amounts were paid or not paid for religious, charitable, etc., purposes.) (See instructions 4 and 18)

1. Name and address of each beneficiary (Designate charitable organization, or beneficiary class, if any)	2. If return is for a trust, state relationship of grantor to each individual beneficiary	3. Taxable income less any partially tax-exempt interest included in Item 4, page 1	4. Partially tax-exempt interest included in Item 4, page 1	5. Federal income tax paid at source (7½% of Item 3, page 1, less from Item 4, page 1)	6. Income and profits taxes paid in a foreign country or United States possession
(a) Linda K. Tidwell 100 Charming Beverly Hills, Calif.	Daughter	\$ 27,019.72	\$	\$	\$
(b) J. J. McMan 117 So. Hill Los Angeles 13, Calif.	Son	27,019.72			
(c)					
(d)					
(e)					
(f)					
(g)					
(h)					
(i)					
(j)					
Totals.....	XXXXXXXXXX	\$ 54,039.51	\$	\$	\$

QUESTIONS

1. Was an income tax return filed for the preceding year? Yes
If so, to which District Director's office was it sent? Los Angeles

2. Date estate or trust was created Oct. 1, 1915

3. If copy of will or trust instrument and statement required under General Instruction I have been previously furnished, state when and where filed Governo

4. Check whether this return was prepared on the cash ☐ or accrual ☐ basis.

5. Did the estate or trust at any time during the taxable year own directly or indirectly any stock of a foreign corpora-

tion or of a personal holding company as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No If answer is "Yes," attach list showing name and address of each such corporation and amount of stockholdings.

6. If return is for a trust, state name and address of grantor Same as Beneficiary

7. If return is for an estate, has a United States Estate Tax Return been filed? (Answer "Yes" or "No") No
If answer is "No," will such a return be filed? "Yes" ☐ "No" ☐ "Uncertain" ☐ (Check which.)

DECLARATION (See Instruction F)

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return)

(Date)

(Signature of fiduciary or officer representing fiduciary)

(Date)

(Name of firm or employer, if any)

410 So. Normandie, Los Angeles, Calif.

(Address of fiduciary or officer)

(Testimony of Frederick I. Richman.)

The Court: At this point, counsel, we will recess your case for a few minutes while I take up another matter on our calendar, but which shouldn't require very much time. I had planned to take the afternoon recess at this time, although we took it earlier.

(Whereupon, other court matters were heard.)

Q. (By Mr. Enright): Directing your attention to Exhibit H, the income tax return, does it reflect yourself as one of the beneficiaries, as receiving the income for November and December 1953? [454]

A. It does.

Q. Did you receive the income?

A. I did not.

Q. Was any portion of that money, that is, November's collections, taken off by the Receiver on December 1st?

The Union Bank, the December collections are still a part of this fund accounted for in the Receiver's accounting, is that right?

A. That is correct. The fiduciary return shows——

Mr. Whyte: Objected to. There is no question pending.

The Court: Do you desire to further explain your answer, Mr. Richman?

The Witness: I do.

Q. (By Mr. Enright): Proceed.

A. Fiduciary tax return, Exhibit H, shows as having been attributed to me for the year 1953 from Richman trust, the sum of \$27,019.72. Whereas

(Testimony of Frederick I. Richman.)

in fact, I only received from the Richman trust for the year 1953 the sum of \$19,887.50.

The figure which I used on my individual tax return was \$19,887.50, because I am a cash basis taxpayer.

But the figure the Internal Revenue, Director of Internal Revenue will be checking on will be the figure of \$27,019.72. I can expect an audit as a result of this return.

Mr. Whyte: Now, I am going to object to this line of [455] testimony and ask that this answer be stricken upon the ground there is no showing of materiality. There is no showing these people are, that the Receiver has prepared the return in any manner that was improper or otherwise than pursuant to his instructions and conversations with the employees of the Director of Internal Revenue.

The Court: The answer is in. The objection comes too late, so the answer will stand. I deem the line of inquiry irrelevant, so it should not be pursued further.

Mr. Enright: The relevancy, in my opinion, your Honor, was the fact that the Receiver testified on direct that he had rendered services in preparing an income tax return.

The Court: Another question.

Q. (By Mr. Enright): Now, directing your attention to the subject of surcharges, does the Receiver's report show there was petty cash in the sum of \$785.00 under his control as of 5:00 p.m. February 28, 1954?

(Testimony of Frederick I. Richman.)

Mr. Whyte: Won't the report speak for itself there, your Honor?

The Court: Yes, it will. I take it this is only to initiate a line of inquiry and to pinpoint it.

The Witness: The Receiver's report shows that when he took over he was chargeable with \$785.00, but as of February 28, 1954, there is no accounting for the \$785.00.

Q. (By Mr. Enright): Did you make a computation of the [456] rents collected by the managers for the month of February, as to the total amount of rents collected? A. I did.

Q. How did that amount compare with, or what was the difference, if any, between that amount, shown by the Receiver for the month of February?

A. The managers show they collected—

Q. Do you know the net difference, Mr. Richman? A. \$1,290.59.

Q. That is, the collections for February 26th, 27th, 28th? A. That is correct.

The Court: How much?

The Witness: \$1,290.59.

Q. (By Mr. Enright): For what period?

A. Well, it is the amount that is necessary to balance the amount shown, that the managers of the individual buildings collected for the month of February, with the amount shown in the Receiver's report.

The difference arises in that the Canterbury, the manager collected \$9,059.59 and the Receiver only received—collected from her \$8,307.31, according to

(Testimony of Frederick I. Richman.)

his report. A difference of \$752.28, which was available for his collection on February 28, 1954.

The Western Arms, the manager's report shows \$4,724.25 [457] available to the Receiver for the month of February 1954, but the Receiver only took from her \$4,185.94, leaving a balance of \$538.31, which the Receiver could have collected February 28, 1954. Or a total——

Mr. Whyte: As to both statements made by Mr. Richman, that the Receiver could have collected such and such a date, I am going to move they be stricken; pure conclusion on his part and no foundation laid whatever.

The Witness: Mr. Camusi and Mr. Udall collected them on February 28, 1954.

Mr. Whyte: I will accept that statement, Mr. Richman.

Mr. Camusi: I won't. I don't know it is the truth. It is not the best evidence and I object on that ground and ask it be stricken.

The Court: Sustained; granted.

Mr. Enright: Well, I am merely accumulating the evidence here at this time. It is in the deposition of Mr. Hallberg and it is in evidence already.

The Court: Apparently, this is part of the accounting between Mrs. Tidwell and Mr. Richman, and the figures, I take it, will not be in dispute. They are the result of an audit on which auditors probably agree, and I don't think they have any place in this inquiry into Mr. Hallberg's management.

(Testimony of Frederick I. Richman.)

Mr. Enright: I would merely point out the court order [458] was that the Receiver retain moneys under his control, the order of February 26, 1954; this is an item of \$1,290.59 that he did not retain.

I am concluding the evidence on the point. Whether it is relevant or not, I can only state what the court order was.

Q. (By Mr. Enright): The net difference was \$1,290.59? A. That is correct.

Q. Oliver Cromwell was \$2,027.25?

A. That is correct.

Q. You seek those surcharges against the Receiver in this proceeding? A. I do.

Q. Or that they be a charge against the plaintiff in this action?

A. They should be taken into account in this matter.

The Court: We are going to try the case as between the plaintiff and defendant at a later time, as to what shall be done with these moneys.

I will keep under submission this matter of the settling of the Receiver's account and fixing his compensation until that other matter is decided.

Mr. Enright: Thank you, your Honor. That is acceptable to our side. We merely want the moneys to be taken into consideration.

Mr. Whyte: I would like to inquire of the court and [459] inquire of Mr. Enright, whether there is any intention now to shift the position which was expressed this morning, when Mr. Fussell was here, to the effect you were not seeking to charge the

(Testimony of Frederick I. Richman.)

surcharge to the Receiver personally for any of these claimed items.

Now, is that correct, Mr. Enright?

The Court: I understand Mr. Enright is seeking to charge the fund which is in the Receiver's possession.

Mr. Whyte: Very well.

The Court: Is that right, Mr. Enright?

Mr. Enright: Yes.

Q. (By Mr. Enright): And in the same category as the \$2,027.25, Oliver Cromwell payment.

A. Yes.

Q. Now, directing your attention to the subject matter of your November fees under the trust agreement, terminated by the decision of November 30, 1953, did you have a conversation with the Receiver concerning the amount of your fees, and the payment of your fees? A. I did.

Q. Does the Receiver account for your fees as being an obligation of the trust in the amount of \$3,104.33? A. The report so shows.

Q. State the conversation you had with the Receiver.

A. The first conversation was when Mr. Whyte was [460] present, December 3rd, in my office. I mentioned the fact I would be entitled to fees.

Mr. Camusi: I object on the ground of hearsay, insofar as Plaintiff Tidwell is concerned, with the understanding this would not be binding on our dispute as to whether he is entitled to those fees.

(Testimony of Frederick I. Richman.)

The Court: I take it that no one claims the Receiver paid his fees?

Mr. Camusi: We can stipulate——

The Court: Since it is not money paid out by the Receiver, and if it is allowed should be allowed against the fund, and that litigation is to be taken up here on the 18th, we ought to defer inquiry until that time.

The Witness: Other than the statement that the Receiver made, it had never been mentioned to him.

The Court: What difference does it make? What difference does it make if you had a big fight about it or if you negotiated about it. I don't see it makes any difference. You either have it coming from the fund or you don't.

And since all counsel are here, I might mention a tentative thought I have upon that, so that you can deal with it in your research and be prepared to discuss it at the time of the trial.

It seems to me that the judgment in the principal case wiped out the contract, that is, it was a voidable contract [461] and it was voided by that judgment.

Therefore, Mr. Richman is not entitled to the fees as contracted, but it is obvious from the evidence which we have had before that he rendered services, that he was the trustee during this period of time, was the manager of the trust.

I think he would be entitled to fees on a *quodum merit* basis. If anyone has any argument with either of those propositions,—I can see from the way the

(Testimony of Frederick I. Richman.)

heads are shaking no one agrees with what I have said—you can argue it fully on the 18th; or what would be more convincing, show me authority one way or the other.

Q. (By Mr. Enright): State the conversation you had with Mr. Enright and Mr. Hallberg on that subject matter.

Mr. Enright: Rebuttal testimony. These gentlemen have claimed they rendered services here, and I would like to have the evidence completed on the rendition of their services. That is the object of this testimony.

Mr. Whyte: Objected to as immaterial.

The Court: What services are they going to get paid for on arguing about something which is none of their business? I am not going to allow any fees for discussions about this subject.

Mr. Enright: To Mr. Whyte or Mr. Hallberg?

The Court: No.

Mr. Enright: I will not pursue it further then.

Q. (By Mr. Enright): Now, directing your attention to the testimony of Mr. Mann, the hypothetical question, stating 406 apartments. How many apartments were there, in fact? A. 409.

Q. And the same question pertaining to Mr. Hallberg's testimony as to how many apartments he was managing. A. 409.

Q. He testified 406. Have you examined the Receiver's records pertaining to his filing of his bills?

A. I endeavored to.

Q. And do you recollect his testimony that he

(Testimony of Frederick I. Richman.)

set up, as a part of his services, a system of filing the bills? A. I do.

Q. What did you find in his records pertaining to the filing of the bill, for example, covering three or four apartment houses for services or materials furnished?

A. I couldn't find them. Billings for the individual houses were in individual piles. The others were just in hodge-podge in another file.

Q. Do you recollect his testimony that he set up a system to determine each house's expenses each month? A. I do.

Q. Do you have his bookkeeping record here or documents he set up?

A. I have the Receiver's books here. [463]

Q. Point out the accounting, if you can, showing the expenses per house for each month.

A. The Receiver has endeavored to set up columns in the book for the individual houses, as far as individual expenses are concerned, against that particular house.

However, he has not followed through with it and the records as shown would not give the individual expenses of the individual houses in complete detail.

Q. Will you refer to each sheet, so there will be no conclusion on your part, and point it out?

Mr. Whyte: I am going to move that testimony be stricken as a conclusion of the witness. I have no objection to his testifying as to what the facts

(Testimony of Frederick I. Richman.)

show, but as to his conclusion that they do or don't do certain things, I don't think it is permissible.

The Court: Is this book in evidence?

Q. (By Mr. Enright): What do you have before you?

A. I have what purports to be the general ledger of the Receiver.

The Court: It ought to be in evidence. It isn't, and since it will be in evidence before we get through here, I will examine it and determine how much of Mr. Richman's testimony is conclusion and how much is simply orientation of the court to the document. So the motion to strike is denied. [464]

Q. (By Mr. Enright): Proceed, Mr. Richman.

A. The Receiver lists a petty cash fund and divides the amount of \$785.00 between the five houses, as of February 28, 1954, and the prepaid insurance is not segregated to the individual houses, which would be an item to give the expense of the individual houses.

There are numerous pages in the books that merely set forth a title, with no entries on the pages at all. There is one "Inventory." There is another page, "Investments."

"Real Estate Control" is not broken down, to give what the individual building is carried at.

Mr. Whyte: I am going——

The Witness: Neither is the reserve for depreciation of real estate, to show how much the individual building is carried at.

Mr. Whyte: I am going to object to this line of

(Testimony of Frederick I. Richman.)

testimony, in answering, whereby the witness attempts to pick holes and flaws in the method of keeping these books, upon several grounds.

In the first place, this man hasn't been qualified as an expert, a CPA, who is able to tell us whether or not these books are set up in a proper manner.

No foundation has been laid as to his qualifications to state whether or not Mr. Hallberg's method of bookkeeping is improper or wrong in any degree. [465]

Mr. Enright: May I be heard?

The Court: We have had before us, in the principal trial of the case, considerable evidence of Mr. Richman's keeping books on the particular properties over a long period of time.

I think, although he is not qualified to testify as a public accountant would be, that he is qualified to testify from his own experience in the handling of these properties, that a particular subject either is or is not treated in the books.

Mr. Whyte: Well then, my second objection, presuming the court has overruled the first one, is what he is testifying to here, again, is just his conclusion that he draws from entries or omissions of entries in the books. It seems to me that is the court's province and not Mr. Richman's.

The Court: It is the court's, but the court wants to be fully advised on a matter of judging the stewardship of a court-appointed fiduciary. The objection is overruled.

The Witness: The furniture and fixture account

(Testimony of Frederick I. Richman.)

is broken out, as far as the value of the five individual buildings are concerned.

The research for the depreciation of furniture and fixtures is broken out to give the value against each of the five individual buildings—the furniture in each of the five individual buildings. [466]

The improvements is broken out into the five buildings. The question of the account of supplies is not broken out to the five buildings, but there is a notation to F.M. and W.A., which would mean, evidently, those supplies went to the Fountain Manor and the Western Arms.

The unemployment insurance premium sheet has columns headed up for the five buildings, but there is not a figure on that page.

The prepaid taxes have columns headed up for the five buildings, but there is not a figure on that page.

There is a sheet entitled "Utility Deposits," without a figure on the page.

There is a sheet entitled "Deposits, W.C.", which means workmen's compensation insurance, which the credits do not add up to the credit balance shown in the balance column. So it would be impossible to attempt to balance these books, without considerable work on them.

There is a sheet "Advance on Conditional Contracts," without any writing on that page.

There is a sheet of "Note and Accounts Payable," with some writing on it, but not broken down as against the five buildings.

(Testimony of Frederick I. Richman.)

There is a sheet "Accounts Payable," with columns for the five buildings, headed up, but not a figure on that sheet.

There is a sheet "Notes, Short Term," and not a figure [467] on that page.

There is a sheet "Accrued Payroll," with columns headed up for the five buildings; there is not a figure on that page.

There is a sheet of "I.C.A.," which is the employees'—which is the Social Security. That is broken out to the five buildings, as well as the office, which will give the amount of expense attributable to the Social Security for the employees of that building.

The same is relative to the sheet marked "State Unemployment Insurance, Employees." That is broken out into the five buildings.

There is a sheet "Income Tax, Withholding," which is broken out into the five buildings and would give the information as to the income and expense of those five buildings.

There is the F.I.C.A. sheet, Employers, which is broken out to the five buildings.

There is another sheet "State Unemployment Insurance, Employers," which is broken out to the five buildings.

There is another sheet "Federal Unemployment Insurance," with columns headed up for the five buildings, but there is no allocation of the amounts of \$212.59 to any of the five buildings, so the amount of Federal Unemployment Insurance attributable

(Testimony of Frederick I. Richman.)

in the operation of the individual buildings is impossible of ascertainment from that sheet.

There is another sheet headed up "Other Current Liabilities," [468] that has five columns for the buildings, but there isn't a figure on the page.

There is another sheet, "Key Deposit." That has columns headed up for the five buildings, but there is not a figure on the page.

There is a sheet "Trust Deeds Payable," and followed with the "Pacific Mortgage Corporation."

Q. (By Mr. Enright): That is the only trust deed payable?

A. That is correct. It shows here as the check being dated February 28th, which was the payment upon the Oliver Cromwell loan.

There is a sheet "Advance Rentals," and it has columns headed up for the five buildings, but there is not a figure on the page.

There is a sheet "Deposits Held," which has columns headed up for the five buildings, but not a figure on the page.

There is a sheet "Reserve for Contingencies," that has nothing on it.

Q. I think that is adequate, Mr. Richman.

A. Over half of the remaining sheets, I would say, have nothing on them except a heading.

Mr. Whyte: I wonder if I might be permitted to take the witness again on voir dire for just a moment, your Honor? [469]

The Court: Yes.

(Testimony of Frederick I. Richman.)

Voir Dire Examination

Q. (By Mr. Whyte): Would you please turn to one of those sheets where you found a figure, but nothing—turn to one of the sheets where you found a columnar heading and nothing on the page.

A. (Witness complies.)

Q. "Prepaid Taxes"? A. Yes.

Q. Are you able to state positively, Mr. Richman, at no place in the books kept by the Receiver does anything appear for prepaid taxes? In other words, this is a ledger you are looking at, is it not?

A. That is correct.

Q. Is it your testimony that at no place in the Receiver's accounts is the subject of prepaid taxes treated?

A. Well, they head up a page right at that point there (indicating).

Q. Perhaps I didn't make my question clear, Mr. Richman. Again I will inquire whether or not this book is the ledger.

A. I haven't been able to find anything in the cash receipts or disbursements or journal relative to prepaid taxes.

Q. Have you in every instance in which you testified [470] there is nothing on these pages, which are headed with columns, and a ledger, looked at the rest of the books kept by the Receiver, the journal and cash receipts book, to determine whether or not the matter was treated in those books?

A. Yes, accounts payable there was set up in the journal; an accounts payable of \$3,800.00.

(Testimony of Frederick I. Richman.)

There is no entry on this sheet here, "Accounts Payable," which has five columns for the buildings. It is not set up.

The figure I am referring to appears in the journal of the Receiver's books. Journal 2, "Accounts Payable \$3,827.66" is not reflected on the ledger sheet of the accounts payable.

Q. Is that the journal, this black book?

A. That is the journal and cash receipts and cash disbursements.

Q. Very well. Let's start back here at 1, near the first, where you say there is something, that no figures are shown on the page. Will you go back to the first here?

A. (Witness complies.)

Q. Begin at the point you say there are columnar headings and there is nothing shown on the page.

Mr. Enright: This is voir dire examination of this witness, and I would like to develop my point.

My point is that the Receiver is claiming he rendered services, page 5, line 15, and made plans and revision of the accounting system, and I want to demonstrate he didn't render any such services.

The Court: All right. I didn't understand exactly what Mr. Whyte had in mind. I think what he is doing now is properly cross examination and not voir dire.

So, Mr. Whyte, please reserve it until cross.

Mr. Whyte: Very well. I will be glad to defer, your Honor.

(Testimony of Frederick I. Richman.)

Q. (By Mr. Enright): Now, directing your attention, Mr. Richman, to the Receiver's testimony in his petition concerning rendering services in installing tile, did you make an examination of his records, to see what you could find were base entries, to support his page 5, line 9 of his Petition, where he says that he rendered services in regard to tile in 409 apartments? A. I did.

Q. What did you find?

A. The only bills that were—he had paid for tile work amounting to \$61.65 and \$12.00 for tile work.

Q. That is \$73.65? A. Yes.

Q. Now, what did you find in auditing or checking his records, to see what he expended or paid out on account of reconditioning stoves per unit or per stove?

A. Well, I found out he sent out stoves to—factory rebuilt stoves to be reconditioned. One at the Canterbury [472] and two at the Fountain Manor in December, and then again in December he sent one at the Fountain Manor and two at the Western Arms at \$25.00 apiece for reconditioning.

Q. His testimony was \$56.00 would be the reasonable cost at the time he obtained this order for renovation. A. That is my recollection.

Q. Now, directing your attention to page 9, line 14 of his Petition, on the subject matter of painting, particularly 11 per cent of Fountain Manor was painted. First, how many apartments were there in that apartment house? A. 91.

(Testimony of Frederick I. Richman.)

Q. What did you find he expended on account of painting or these five painters they hired? What was the gross amount of money?

A. During the three months' time the gross amount of money expended for painting was \$968.50, payable to Superior Paint Company \$109.25, Proventure \$95.00, Trager \$75.00, Genteel \$200.00; Lorenz \$225.00. Genteel \$50.00, Genteel \$100.00, Erickson \$125.00.

I found that some of the painting in Apartment 315, I couldn't find the bill on that one; it was touched up, \$5.00.

Apartment 220 was bath and touch-up, \$45.00. The others were pretty nearly lump-sum bills and I couldn't compute out that.

Q. Directing your attention to the LaLoma Apartments, [473] page 11, line 4 of his Petition, what did you find from his records he had expended those moneys on painting for?

A. \$275.00, of which \$160.00 was for painting the lobby. He had four ceilings painted at \$10.00 apiece, \$40.00.

He had the bath and kitchen in 107, \$40.00.

Then he had the bath in 304, \$17.00.

And a touch-up in 106, \$4.00.

Q. I am directing your attention to page 12, line 13 of his Petition concerning the Western Arms painting.

What did you find is the gross amount of money he expended there? A. \$663.00.

(Testimony of Frederick I. Richman.)

Q. How many apartments are there in that apartment house? A. 76.

Q. The Petition alleges 11 per cent of them were repainted. A. That is correct.

Q. What did you find in the bills?

A. This was one bill that was for \$135.00, Apartment 304. That is what it would cost to have that painted.

\$120.00 for Apartment 119.

There was another bill in a lump sum, with no itemization, \$408.00. I don't know, my experience would be that [474] only three apartments could be painted for the \$408.00.

Q. That is based on your six years of operation or approximately six years?

A. Yes. Unless it includes touch-up at \$4.00 or a bath at \$15.00. Then you could get into a lot of apartments, but not complete jobs.

Q. Now, directing your attention to the \$6,121.40 shown on Schedule C of Receiver, being money expended after March 1st. Did you find any of those posted in the books or records of the Receiver?

A. No, they have not been posted at all.

Mr. Enright: I understood, from the court's statement, it was that, in substance, the matter of plaintiff being chargeable with receiving benefits of some of these moneys will be determined at the same time as these fees.

The Court: Yes.

Mr. Enright: If that is correct, I need not go

(Testimony of Frederick I. Richman.)

into escrow instructions at this time. I think I will say that—perhaps we can agree upon it.

The Court: I think you can agree on many of these things at the pretrial conference.

Mr. Camusi: Yes.

The Court: In fact, I was hopeful you would agree upon so much the matter might be submitted upon an afternoon's stipulations. [475]

Mr. Enright: I will certainly endeavor on my part to do so.

I would like to offer in evidence—I understand there is no objection—the application to the Smog Control Board, which is a part of the Receiver's files or formerly Mr. Richman's file.

The Court: It will be received.

The Clerk: Defendants' I in evidence.

(The document referred to was marked Defendants' Exhibit I and was received in evidence.)

Mr. Enright: That completes my direct examination.

The Court: All right. We will resume the trial of this case tomorrow at 9:45. We will recess until then.

(Whereupon, at 4:00 o'clock p.m., Monday, June 7, 1954, an adjournment was taken until Tuesday, June 8, 1954, at 9:45 o'clock a.m.)

* * * * * [476]

BARNEY MANALIS

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, sir?

The Witness: Barney Manalis.

Direct Examination

Q. (By Mr. Enright): Were you associated in any manner with the Oxyaire Company during the period October 1, 1953, through February 1954?

A. Yes, sir, I was.

Q. What was the capacity of your association?

A. Vice president.

Q. I show you Exhibit I in this proceeding, and ask you if you are familiar with the transaction evidence by Exhibit I?

A. Yes.

Q. An application for it.

A. Yes, sir, I am.

Q. That involves one of the five apartment houses—let's see, which one does this involve?

A. On Normandie. That would be the Cromwell, I believe.

Q. 418 South Normandie.

A. Yes.

Q. I want to direct your attention to the issuance of a permit and approval which were received by Mr. Roy E. Hallberg shortly after being mailed to him by Mr. Richman about December 7, 1953.

As vice president were you aware that a permit and an approval had been issued by the Smog Board about the early part of December 1953?

(Testimony of Barney Manalis.)

A. We were so advised, yes, sir, but we hadn't received them.

Q. What did you do, if anything, in connection with the performance of that contract in the installation of those facilities after being so advised?

A. We immediately contacted Mr. Richman to find the approved plans of the Air Pollution District, if they had been sent to him.

He advised us they had and had been turned over to Mr. Hallberg, who was the Receiver for the Oliver Cromwell Apartments.

Q. Did you later attempt to or contact, in any manner contact Mr. Hallberg?

A. Quite a few times, yes, sir, but never successfully.

Q. Did you talk to anyone at the office or the Oliver Cromwell office of the Receiver?

A. Yes, a Mr. Roy Harrison.

Q. Can you fix approximately when it was that you talked to him concerning this subject matter, that is, the first time you just referred to here?

A. Well, after we were notified that the approval had been sent through from the Air Pollution District, and calling Mr. Richman, we then tried to contact Mr. Hallberg and was put in touch with Mr. Roy Harrison.

He advised us at that time that as the federal receiver for the apartment house he was not bound to the contract, and to hold up and do nothing.

Q. That was in December of 1953?

A. Yes, sir.

(Testimony of Barney Manalis.)

Q. Now, I direct your attention to Exhibit E, being a [480] letter dated January 22, 1954. Did that letter come to your attention as an officer of the Air Pollution Control, Inc., 357 North La Brea Avenue?

A. Yes, sir, that was addressed to me and I received it.

Q. Now, bearing in mind the date there, January 22, 1954, did you have a conversation prior to that time with Mr. Hallberg or Mr. Harrison with reference to this——

A. About a week or ten days prior to that we got a telephone call, or I did, rather, from Mr. Harrison, that they had been cited at the Oliver Cromwell and for us to proceed with the contract and installation.

I advised Mr. Harrison at the time we couldn't do so because we had not received the approved blueprints from the Air Pollution District that they had sent to Mr. Richman, who in turn had turned it over to them.

Q. Was there any discussion during that conversation or a later conversation concerning the subject matter of materials to be used in the installation?

A. Yes, at that time one of the necessary component parts of our unit was an inconel metal that had been frozen by the Government.

I explained to Mr. Harrison that it was not available at that time, that we would try to, on a priority basis, procure some. I couldn't give him a

(Testimony of Barney Manalis.)

definite time for the [481] starting of the installation.

Q. Later was the contract performed?

A. Yes, sir.

Q. And the job completed? A. Yes, sir.

Q. Were the materials available and under your control in December to perform this contract?

A. Oh, yes. Yes, sir, we had it in stock, as a matter of fact.

Mr. Enright: You may cross examine.

Cross Examination

Q. (By Mr. Whyte): Mr. Manalis, are you now connected with Air Pollution Control, Inc.?

A. Not actively, no, sir.

Q. When did you leave that concern, sir?

A. Approximately two months ago.

Q. That would be sometime in April of 1954?

A. That is right. As a matter of fact, April 28th was the terminating date.

Q. You mentioned a moment ago having been in short supply on a particular type of metal. I think you used the word "inconel", is that correct?

A. That is correct.

Q. How is that spelled, Mr. Manalis? [482]

A. I-n-c-o-n-e-l.

Q. When you talked with Mr. Harrison, that was sometime in the middle of January, that he told you to proceed to perform the contract?

A. That is right, yes, sir.

(Testimony of Barney Manalis.)

Q. It was at that time that you told him the metal was in short supply?

A. That is right.

Q. How long was it before that metal became available to you?

A. As near as I can recollect, within the next two or three weeks or maybe four. We found some at one of the suppliers that wasn't bound by government priority. That is how we were able to get it.

Q. Do you recall talking to me as attorney for Mr. Hallberg over the telephone sometime during the early part of February, during the course of which conversation you told me that metal was still unavailable?

A. I don't believe I know your name, sir.

Q. I am John Whyte.

A. Well, I do remember a conversation with you, Mr. Whyte. At what time, I am a little hazy.

Q. Very well. Then your testimony is that for some time prior to January 15th, for a period of three to four weeks, the inconel metal, which you needed for this installation [483] at the Oliver Cromwell, was not available to your concern, is that correct?

Mr. Enright: To which objection is made. It is a misstatement of the evidence, that the material was short two or three weeks before January 15th. He did not so testify.

Mr. Whyte: Does the court want to rule?

The Court: I thought you wanted to reframe your question.

(Testimony of Barney Manalis.)

Mr. Whyte: I will reframe the question, your Honor.

The Court: All right.

Q. (By Mr. Whyte): Is it your testimony that for some time prior to about the middle of January 1954, and continuing for a period of three or four weeks, the inconel metal, which you needed for the installation of this incinerator equipment, was not available to your concern?

A. Well, the time prior to January 15th, I don't think it could have been any more than ten days, or two weeks at the most.

Q. Ten days to two weeks?

A. Approximately. In other words, it was right—I can't be exact, but it was right after the first of the year that this government directive came out freezing inconel metal and putting it on priority.

Q. Let's see if I have your testimony correctly. For a period of from ten days to two weeks prior to January 15th, [484] and for the period of from three to four weeks following January 15th, this inconel metal was unavailable to your concern?

A. I think the restriction went even longer, but we were able to find what we did that wasn't governed by priority.

Q. May I have an answer to my question, please, Mr. Manalis?

You have told me, first of all, that for some three or four weeks after January 15th the inconel metal

(Testimony of Barney Manalis.)

was not available for installation of the incinerator at the Oliver Cromwell, is that right, sir?

A. Approximately.

Q. Thank you. You have also told me for a period of from ten days to two weeks prior to January 15th the same situation obtained, is that correct, sir?

A. That is right, sir, yes, sir.

Q. Thank you. The time you talked to Mr. Harrison, in or about the middle of January 1954, did you tell Mr. Harrison either in substance or effect that you would get in touch with the Air Pollution Control District and attempt to do something about this warning notice that had been issued?

A. Yes, sir, I did. And we contacted the department there. We were powerless to do anything in regards to a citation that had been issued, that the owner would have to appear. We so notified Mr. Harrison. [485]

Q. Didn't you tell Mr. Harrison or Mrs. Hallberg that you had contacted the Smog Control authorities and there was nothing to worry about, Mr. Manalis?

A. No, sir.

Q. You never made that statement?

A. Definitely not, not at that time. Are you referring to——

Q. I am referring to the middle of January.

A. That is after a citation had been issued?

Q. After the warning notice had been issued.

A. No, sir, I did not.

The Court: He isn't talking about the citation,

(Testimony of Barney Manalis.)

Mr. Witness. He is talking about a warning notice. Do you understand?

The Witness: Yes, I do.

Q. (By Mr. Whyte): That document should be in evidence. Perhaps we can refresh your recollection.

Mr. Whyte: Do you have that, Mr. Clerk?

The Clerk: Which exhibit?

Mr. Whyte: You will have to let me see your exhibits.

Mr. Enright: It is not in evidence. Here it is (indicating).

Mr. Whyte: Thank you.

Q. (By Mr. Whyte): Mr. Manalis, I show you a notice on the stationery of Air Pollution Control District, dated [486] January 13, 1954, which bears the notation that:

“You are hereby charged with violating Section 24,242 of the Health & Safety Code of the State of California by discharging smoke in excess of that allowed from chute fed incinerator,”

that notice being directed to the Oliver Cromwell Apartment Hotel.

Is it with reference to that notice that Mr. Harrison called you on or about the 15th of January?

A. That is right, sir, yes, sir.

Q. It was in response to that call that you talked to the Air Pollution Control Authorities?

A. That is right, sir.

Q. What did they tell you?

(Testimony of Barney Manalis.)

A. As near as I can remember now, we explained that we had the prints in operation—the prints approved, rather, which they knew. And that we were told to go ahead with the installation of the job.

And as near as I can recollect right now, whoever I contacted at that time said it probably would be O.K. to go ahead.

Q. Did you tell the Smog Control authorities, when you talked to them on or about January 15th, that your company was in short supply of this inconel metal?

A. I may have, sir. I wouldn't swear to it.

Q. It is your testimony that they told you it was all [487] right to go ahead?

A. Well, we had the approved plans to go ahead, yes, sir.

Q. As a matter of fact, as of January 15, 1954, you couldn't have gone ahead without that metal, could you, Mr. Manalis?

A. Not and complete the installation, no, sir.

Mr. Whyte: No further cross examination, your Honor.

Redirect Examination

Q. (By Mr. Enright): As I understand it, Mr. Manalis, you did have the materials throughout the month of December?

Mr. Whyte: Objected to as leading and suggestive; improper redirect examination.

The Court: Sustained.

(Testimony of Barney Manalis.)

Q. (By Mr. Enright): Did you have this type of material in supply in the month of December?

A. We stocked it, yes, sir.

Mr. Enright: No further questions.

Mr. Whyte: No questions.

The Court: May this witness be excused?

Mr. Enright: Yes, we would appreciate that.

The Court: Thank you, sir.

(Witness excused.) [488]

FREDERICK I. RICHMAN,

called as a witness on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Mr. Whyte: Mr. Enright, unless you have some objection, perhaps we had better put this Notice of January 13th in evidence.

Mr. Enright: I have no objection.

Mr. Whyte: Very well. This will be offered as the Receiver's Exhibit next in order.

The Court: Received into evidence.

The Clerk: Receiver's 4 in evidence.

(The document referred to was marked Receiver's Exhibit 4 and was received in evidence.)

NOTICE

DATE JAN 13 19 54

NAME OLIVER CROMWELL APT. HOTEL PHONE NO. DU 7 2261

ADDRESS 418 S. NORMAN AVE CITY LA (CITY OR COMMUNITY)

RE PREMISES AT SA ME CITY — (CITY OR COMMUNITY)

(STREET, NUMBER, ZONE) (STREET, NUMBER, ZONE)

YOU ARE HEREBY CHARGED WITH VIOLATING SECTION 24242
OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFOR-
NIA BY DISCHARGING SMOKE IN EXCESS OF THAT ALLOWED
FROM CHUTE FED INCINERATOR

SERVED BY PHILIP ROBERTS
SERVED TO LILA MC CONNELL
TITLE MGR

GORDON P. LARSON
DIRECTOR

By Philip Roberts
ZONE rs

Nº 25780 RECEIVER'S EXHIBIT No. 4

76N590 10/53

Log 8-3111

NOTICE

1890 13 14 24

1890 13 14 24

(Testimony of Frederick I. Richman.)

Cross Examination

Q. (By Mr. Whyte): Mr. Richman, I believe you testified on your direct examination during the years immediately preceding December 1, 1953, you received management compensation for your services in connection with the former Richman Trust, amounting to ten per cent of the gross income from those properties, is that correct, sir? [489]

A. Ten per cent of the gross income, excluding capital items.

Q. And out of that, I believe you testified that you paid a salary to Mr. Harrison, is that true?

A. I paid all overhead expenses. Salary to Mr. Harrison, office rent, telephone, stationery, typewriter, adding machine.

Q. How much salary did you pay to Mr. Harrison?

A. \$450.00 a month.

Q. In addition you paid your own office rent?

A. That is correct.

Q. Telephone?

A. Yes.

Q. Typewriter?

A. Yes.

Q. Stationery?

A. Yes. Postage.

Q. Postage.

The Court: You maintain an office other than your law office in the Subway Terminal?

The Witness: No; it was the same office.

Q. (By Mr. Whyte): Now, I believe you testified that your law practice consisted of several different things, apart from your management of the Richman trust.

(Testimony of Frederick I. Richman.)

I understood you to say that you organized corporations, [490] is that right, Mr. Richman?

A. On occasions, yes.

Q. Did you also draw contracts for clients?

A. Yes.

Q. What tax work, if any, did you do for various clients?

A. Prepare tax returns for a number of clients; handled with the then Collector of Internal Revenue, or, the agent in charge.

Q. You had other books of account in the office that reflected the affairs of other clients, Mr. Richman? A. Yes.

Q. Did Mr. Harrison keep up those books, in the course of his duties as your secretary?

A. He did.

Q. You dictated a letter to another client, with reference to the formation of a corporation or the drafting of an agreement, did you dictate that letter to Mr. Harrison?

A. Mr. Harrison took my dictation when he was the only one in the office. For a time I had a stenographer that took dictation and typing.

Q. For how long was Mr. Harrison your only assistant?

A. From about August 1952 on.

Q. You were away from the office and away from the——strike that. [491]

You were engaged in rather extensive litigation concerning the trust estate with your sister, Mrs. Tidwell, were you not, Mr. Richman?

(Testimony of Frederick I. Richman.)

A. I was.

Q. When did that litigation commence?

A. January 1952.

Q. It continued until, say, until within a few months ago, when this case was settled?

A. This is still part of it, I believe.

Q. During the course of that time, did you consult with your attorney in preparation for the trial of that action?

A. I did.

Q. Were those consultations rather extensive?

A. Depending upon the court hearings that were coming up.

Q. When did those court hearings take place, Mr. Richman?

A. Very frequently. I couldn't tell you, without checking over, to find out the number of times; the court register.

Q. Were you present in court at all those hearings or substantially all?

A. Not all of them, but a good many I was present.

Q. When did the actual trial of the case take place? [492]

A. It started in May 1953 and went for, I believe, about eight days and then was continued to September and went for about 12 days.

Q. Between those intervals you were in consultation with your attorneys, in preparing the case for trial or resumption of trial?

A. As I was needed.

Q. I further understood you to testify that the

(Testimony of Frederick I. Richman.)

rents which were collected during a comparable period, December 1, 1952, to February 28, 1953, amounted to some \$97,404.58.

Do you recall those figures, Mr. Richman?

A. Whatever the figures were, whatever I testified to.

Q. I further understood you to testify that the figures, that the figures showing the rents collected during the period December 1, 1953, to February 28, 1954 were \$95,066.83. Is that right, Mr. Richman?

A. Whatever the figures were; those figures were taken from the Receiver's report, as being the amount shown on the Receiver's report, but then to which I added the \$1,290.59, to arrive at the total of \$95,066.83, being the rents the managers collected during February, but which the Receiver did not collect.

Q. I understand, Mr. Richman. So that the total rents for the three-month period, December 1, '52 to February 28, '53, exceeded by approximately \$2,337.75 the rents collected [493] during the period December 1, 1953, to February 28, '54, is that right?

A. That is correct.

Q. Is it your testimony that the rents collected from the apartment houses during your regime as trustee were somewhat or substantially in excess of those collected by Mr. Hallberg during his tenure of office?

A. They were in excess by the difference between the two figures.

(Testimony of Frederick I. Richman.)

Q. You made the statement, during the course of your direct examination, you never had a bank account like Mr. Hallberg, to do business with, is that right?

A. No, that is not correct. I said I never had a bank account like his, except during the time that the Villa Carlotta had been sold.

Q. Whatever your statement was, I took it down as close as I could, and I had you quoted as, "I never had a bank account like that to do business with."

In substance, that is your testimony, that your bank account wasn't comparable to the one Mr. Hallberg was managing, is that correct?

A. That is correct. I never operated with that much cash in the bank except during the period immediately after the sale of the Villa Carlotta.

Q. Yet it is your testimony that for comparable periods [494] of time the rents collected under your regime were several thousand dollars in excess of those collected by Mr. Hallberg, is that right?

A. For the period 1952-53, for the comparable period that the time the Receiver was in.

Q. Now, you stated that you saw me at the hearing in the Municipal Court on or about February 1st, and I rendered no services whatever at that hearing.

Did you know for whom I was appearing at that hearing, Mr. Richman?

A. Mrs. McConnell.

Q. Did you see me approach the bench and join

(Testimony of Frederick I. Richman.)

with Mr. Enright in requesting a continuance of the matter for some three weeks?

A. I heard Mr. Enright request for the thing, making the statement on there, and you said that was agreeable to you.

Q. How long were we all present there in the Municipal Court that morning, approximately?

A. I don't recollect. He had other matters on the calendar that were heard first, and came through. The particular matter here took about three minutes.

Q. We were there somewhere in the neighborhood of three-quarters of an hour, were we, Mr. Richman, either waiting around or hearing? [495]

A. I couldn't say.

Q. You mentioned a conversation which you had with Mr. Hallberg shortly after December 1, 1953, in which you claim that he told you he was operating a 40-unit apartment building, is that right?

A. That is correct.

Q. Are you certain he didn't tell you that that was a 14-unit building, Mr. Richman?

A. No, it was a 40-unit on East Colorado.

Q. You are positive of that, sir?

A. I am.

Q. He told you that the apartment building was on East Colorado Street in Pasadena?

A. He did. I was particularly cognizant of the fact, because at one time I had looked rather completely at a building on East Colorado, with the prospects of buying it for the trust.

(Testimony of Frederick I. Richman.)

Q. You were familiar with this building Mr. Hallberg told you he was operating?

A. He didn't tell me what building it was. I was familiar with a certain section of East Colorado. I was wondering whether it was the same building I had been looking at.

I asked him what the address was, and he told me that he had been told not to discuss matters with me. [496]

Q. You called Mr. Harrison quite frequently during the course of the receivership, didn't you, Mr. Richman?

A. I never called Mr. Harrison except to report something that had come in to me, that was reflecting my credit on my accounts, and that was all. And would receive the assurance it would be taken out. Each time I asked for Mr. Hallberg; he was never in.

Q. Did you testify, in your direct examination, that you went out to see Mr. Harrison, not with reference to your credit, but with reference to this criminal citation that had been issued on a Saturday afternoon?

A. I certainly did.

Q. Didn't you further testify that you talked to Mr. Harrison on two or three other occasions and asked for information from him concerning the operation of the trust?

A. No, I did not.

Q. I will let the record speak for itself.

A. I asked him relative to the payment of some of these bills I was being called about.

(Testimony of Frederick I. Richman.)

Q. Mr. Harrison had been your bookkeeper and in your office for about how long, Mr. Richman?

A. He had been my secretary since August of 1952.

Q. How much longer than that had he been in your office, if at all?

A. I think about two months. My former secretary [497] stated she was leaving and would train another. He came in there and worked under her for about two months.

Q. Mr. Harrison had testified on your behalf during the course of this litigation, had he not?

A. No.

Q. He never appeared in court for you?

A. No.

Q. You mentioned the public liability insurance policy covering these five apartment houses. I believe the question was put to you by Mr. Enright, as to whether or not any of your property was covered by that policy, and your answer was no. Is that right? A. That is correct.

Q. Would your answer be no if I asked you whether or not any of your household employees were covered by that policy?

A. My answer would be no, too.

Q. Will you state that under oath, Mr. Richman? A. On the liability policy.

Mr. Whyte: Is that policy in the files here, Mr. Enright?

Mr. Enright: I only know that your Receiver

(Testimony of Frederick I. Richman.)

and Mr. Camusi have brought records here. What there is here I don't know.

Mr. Whyte: I would like to ask Mr. Camusi's associate [498] present here if he would undertake to find the policy of the compensation insurance, which was in force immediately prior to Mr. Hallberg's term of office and produce it here in the next session, if that is convenient.

Mr. Powsner: It may be necessary to get it from Mr. Udall, however.

Mr. Whyte: Thank you very much.

Q. (By Mr. Whyte): You mentioned the fact, when you looked over the files, Receiver's files, the bills were all scrambled up and jumbled up. Is that right, Mr. Richman? A. That is correct.

Q. When did you look at those files?

A. The early part of March 1954, at the Oliver Cromwell.

Q. You say the early part of March. Just when do you mean?

A. No, I believe it was March 30, 1954. I have the notation in my diary.

Q. March 30, 1954? A. Yes.

Q. At that time those files were in the possession or under the control of Mrs. Tidwell, were they not?

A. Well, they were under the control of the court order of February 26, 1954. I requested to see them and was told they were still at the Oliver Cromwell, and I could [499] go out there and see them.

(Testimony of Frederick I. Richman.)

Q. Let's not fence around with one another, Mr. Richman. You know that, do you not, after you sold your half interest in these properties to Mrs. Tidwell she took over the books of account and all the properties? A. No, I do not know—

Mr. Enright: I object on the ground the question is argument as to what constitutes "fencing around."

The Court: Overruled.

The Witness: I didn't know she took over the books of account and the records. I had been informed previously that any records of the Receiver that I had wanted to see, I would have to obtain a court order for it. That any records prior to the receivership, I could see any time by going out there.

Q. (By Mr. Whyte): In any event, when you looked at these records and claimed you found the bills in a jumbled condition, you found them in such condition on March 30th of 1954?

A. That is correct. However, I was given files by Miss Marr of Mr. Udall's office, stating she didn't know what they were, they were the Receiver's files, and those files were in just as jumbled a condition as all the others.

Q. Your permission to examine those files March 30th came from Mr. Udall's office?

A. Came from Mr. Martin's office. [500]

Q. Mr. Martin's office? A. Yes.

Q. Thank you. Now, you mentioned a conversation which you had with Mr. Hallberg and myself

(Testimony of Frederick I. Richman.)

shortly after the 1st of December, 1953, in which you told us about your management fee for November 1953, is that right, Mr. Richman?

A. That is correct.

Q. Did you ever submit a bill to Mr. Hallberg requesting payment of that fee?

A. I was never requested to submit a bill. I did not submit one. On the occasions I talked with Mr. Hallberg, he said, well, give him time to get straightened out and it would be paid.

Q. You say you never did submit a bill to him?

A. No.

Q. You never demanded payment of that fee from Mr. Hallberg?

A. I did not know what amount the fee would be, because it was based on the income in November and he had all the records of November. He would have to compute it.

Mr. Whyte: I have no further cross examination.

Redirect Examination

Q. (By Mr. Enright): Concerning the subject matter of your 10 per cent under the terms as you have stated it, did you from time to [501] time obtain operating moneys for the operation of the trust, on your own credit? A. I did.

Q. And what was the maximum amount you ever made available for the operation of the trust?

A. About \$250,000.00.

Q. During your tenure as operating agent of the trust, was there any—you have already testi-

(Testimony of Frederick I. Richman.)

fied as to the increase in the value of the assets, have you? I think you did. Is that your recollection? A. I don't recall.

Q. What was the approximate value of the assets of the trust when you became trustee and agent on January 1, 1946?

A. Approximately \$375,000.00.

Q. What was the value of those assets as of February 25, 1954?

A. About \$1,200,000.00.

Q. That is, the plaintiff paid \$600,000.00 cash for one-half of the assets, is that right?

A. That is correct.

Q. During the time that you were agent, manager of these assets, did you ever employ more than one person to work in your office, in which office the trust was being administered? [502]

A. On occasions I have had four or five employees in my office. When the trust litigation started I cut down on all outside work and just concentrated on the defense of the trust litigation, and very small amount of other business.

Q. The 10 per cent fee was agreed to at the time you conveyed one-half the assets in the trust, isn't that correct?

A. No, the 10 per cent fee was agreed to approximately a year and two months prior to the time the trust was created.

Q. At the time the contract, the trust agreement was made, did you contribute one-half the assets to the trust? A. I did.

(Testimony of Frederick I. Richman.)

Mr. Whyte: I object to that on the ground the documents will speak for themselves, as to what he contributed and what agreement was reached.

The Court: What about it?

Mr. Enright: We are merely introducing re-direct evidence as to the circumstances of the 10 per cent fee. One of the circumstances is that the witness, who received the 10 per cent, conveyed half the assets into the trust.

The Court: What about that part of the objection which is based upon the well-known rule that the document should speak for itself?

Mr. Enright: I will introduce the trust agreement. I think it is a part of the records. I will offer the trust agreement in evidence. I do not have it physically here, but [503] it is a part of the court records.

The Court: We will take notice of it, as it appears in the court records.

Mr. Enright: May it be marked an exhibit?

The Court: Yes, give it a number, Mr. Clerk.

The Clerk: It will be Defendants' J in evidence.

(The document referred to was marked Defendants' Exhibit J and was received in evidence.)

Q. (By Mr. Enright): Directing your attention to Exhibit J, did you, as trustor under the terms of that agreement——

Mr. Whyte: I would like to see the exhibit, if you are going to direct somebody's attention to it.

Mr. Enright: I haven't one here conveniently

(Testimony of Frederick I. Richman.)

available, unless the court files are here. I assumed you were familiar with the trust agreement, Mr. Whyte.

The Clerk: Do you want me to get it from the clerk's file?

The Court: If it is not here and you need it, the clerk will get it from the Clerk's Office. The files have been so voluminous he doesn't carry the files in here.

Mr. Enright: Do you need it now, Mr. Whyte?

Mr. Whyte: If you are going to examine the witness on it, I have a right to see it and a right to cross examine on it. [504]

I may say I think this is all immaterial, anyway.

Mr. Enright: But it is very material to us how you arrive at 10 per cent. You contribute half the property it is a whole lot different then than a person contributing nothing.

I will direct questions to another subject matter.

The Court: Well, Mr. Enright, of course, I am quite familiar with that trust agreement. If you want to find out things in it for my consideration, I will consider them whether Mr. Richman testifies upon them or not.

Mr. Enright: I am quite sure the trust agreement does not recite, as a part of it, the inventory of the property conveyed. In other words, it was set up as a naked trust, contemplating the conveyance of property into the trust.

My more informed witness shakes his head, that

(Testimony of Frederick I. Richman.)

I am in error. But that is what I have to find out, I guess, from the document.

I am quite sure it is within the knowledge of most people, and I supposed Mr. Whyte's, that Mr. Richman did convey half of the assets into the trust. That is the point——

The Court: Really, I don't see that makes much difference on computing what compensation shall be allowed Mr. Hallberg.

Mr. Enright: If that could be agreed, that it was a fact Mr. Richman did convey half the assets, I can proceed on [505] another subject matter. If not, why,——

The Witness: I believe the books of the Richman trust are here and will show that in the books.

Q. (By Mr. Enright): Is that an answer to my statement, Mr. Richman? A. Yes.

The Court: We accept that statement as evidence.

Mr. Whyte: I beg your pardon, your Honor?

The Court: I commented that, although it was a statement, rather than in answer to a question, we accept it.

Mr. Whyte: I didn't hear the statement.

The Court: All right. The reporter will read it.

(The record was read.)

The Court: What they will show is Mr. Richman contributed half of the corpus of the trust.

Q. (By Mr. Enright): Now, Mr. Richman, I want to be clear on this record. Mr. Whyte asked you about compensation insurance. And I am quite

(Testimony of Frederick I. Richman.)

sure he also used the term "public liability insurance" in connection with the subject matter as to whether or not your property or your employees were covered by either one of these policies.

If his question contemplated two different policies, would there be any difference in your answer?

A. Yes.

Q. Let's get this straightened out, so we understand. [506]

A. The public liability insurance was entirely for the trust. It included no coverage for me whatsoever or anything that I owned. The policy belonged to the trust.

The compensation policy was my personal policy and the trust employees were picked up on—through my personal policy on that. That policy could not be transferred to the Receiver, because it would leave me open with my personal employees. So the Receiver took out a new compensation policy, paid a deposit of \$400.00 for it, to be used up with premiums, with a quarterly audit, which was the matter that was discussed the other day, with the refund on that deposit. It is money belonging to the Receiver and under his control, subject to the amount he used.

Q. As to the testimony the other day about the Receiver stopping payment on one of the insurance policies, which policy was that?

A. That was the public liability policy.

Q. And later he paid the premium upon that policy?

(Testimony of Frederick I. Richman.)

A. That is correct. He set it up as an account payable as of December 31st and paid it sometime in January.

Q. Did you have any conversation with him about that time that he stopped payment, or participate in a conference with him, with any other person, on that subject matter as to whether or not your property was covered by that public liability policy? [507]

A. I did.

Q. You did? A. Yes.

Q. Is that the conference had at Mr. Dulley's office, that you have already testified concerning?

A. That is correct. That was a conference at Mr. Dulley's office on December 4, 1953.

Mr. Enright: I have no further questions.

Recross Examination

Q. (By Mr. Whyte): I would like to have some clarification on this 10 per cent of gross that you received, Mr. Richman. Let's take the year 1953 as an example.

During that year your 10 per cent gross, assuming you had been in office through December, would have amounted to something in the neighborhood of \$40,000.00, would it not? Not figuring the deductions for a moment. I am talking about the total you would receive 10 per cent of the gross for.

A. I don't believe so.

Q. Let's get to it and see what it was, Mr. Richman. Can you tell me what books those figures are contained in?

(Testimony of Frederick I. Richman.)

A. I think we can get at it quicker from the tax return that was filed as an exhibit yesterday.

Q. Mr. Richman, I am going to take a period of a year prior to December 1, 1953. In other words, from December 1952 [508] through November 31, 1953.

I show you this book of account, pages headed "Management Fee," and the following figures appear in the columns:

December fee \$3,321.81; January fee \$3,280.03, or it may be \$3,380.03 here. Which is that, Mr. Richman? A. That is "2." It is "32."

Q. Then there is a notation I can't read here.

A. "Adjustment."

Q. "Adjustment" to January 31, '53. Is that an addition to the fee up above? A. Yes.

Q. February fee \$3,082.07; March fee \$3,359.86; April fee \$3,083.30; May fee \$3,026.57; June fee \$2,972.29; July fee \$3,176.35; August fee \$3,022.74; September fee \$3,068.89; October fee \$3,004.22.

Now, can you tell me where the fee for November is set up on the books, which you have not yet collected?

A. It is not set up. The Receiver should have set it up or paid it or charged it, but he has done nothing about it, other than show it in his report as a payable of the receivership.

Mr. Whyte: I wonder, for the purposes of examination, your Honor, if I might be permitted to call Mr. Hallberg and ask him to point out where in the books the fee for November is shown? [509]

(Testimony of Frederick I. Richman.)

The Court: Yes. I don't think it is pertinent to this inquiry. I am wondering why you are laboring it so. It is something that is perhaps going to become material to the controversy between Mrs. Tidwell and Mr. Richman, but how does it have any bearing at all upon what compensation Mr. Hallberg is to have?

Mr. Whyte: I think the figures will show, your Honor, that Mr. Richman received, for comparable years period, somewhere in the neighborhood of thirty to forty thousand dollars.

The Court: He received that under a contract which the court has found to be unconscionable and excessive.

Mr. Whyte: I understand, your Honor. Then I won't pursue the matter any further, if the court feels it is immaterial.

Q. (By Mr. Whyte): Just one or two questions, Mr. Richman.

When I was at your office with Mr. Hallberg in the early part of December of '53, I seem to recollect that you had something on your door which indicated that you had a mortgage company in your office, is that true?

A. That is correct, Consolidated Mortgage Company.

Q. Were you the president of that concern?

A. I am.

Q. What relation, if any, does that bear to the Richman trust? [510]

A. None.

Q. That was one of your additional enterprises?

(Testimony of Frederick I. Richman.)

A. That was just about the only one since the litigation started. I resigned my interest in Modern Machine Works and Wood Ice and Gas Company, to take on the litigation.

Q. You were carrying on that mortgage company business for about how long prior to December of 1953?

A. I became president in January 1950.

Q. Mr. Harrison looked after the books of the mortgage company? A. He did.

Mr. Whyte: I have no further recross examination.

The Witness: Could we have a recess?

The Court: We will take a short recess.

(Witness excused.)

(Short recess taken.)

Mr. Enright: Defendant rests.

Mr. Whyte: There will be a short redirect examination of Mr. Hallberg, your Honor. [511]

ROY E. HALLBERG

recalled as a witness on his own behalf, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Whyte): Mr. Hallberg, did you at any time ever tell Mr. Harrison, either in substance or effect, that you were not bound by the

(Testimony of Roy E. Hallberg.)

contracts which Mr. Richman had made with the Air Pollution Control, Incorporated?

A. I certainly did not.

Q. Were you present in the court when Mr. Richman testified that he had a conversation with you on or about the 4th of December, while you were traveling around to the various apartment houses, during the course of which you allegedly told him you were operating a 40-unit apartment building on East Colorado Street? Did you hear that testimony?

A. I certainly did.

Q. What, if anything, did you say to Mr. Richman in that connection?

A. I said I had a 14-unit apartment building. We were riding in a car at the time he asked that question.

I said, "A 14-unit building and it is off East Colorado." I didn't say where.

Q. Speaking now of the Western Arms Apartment building and Mrs. Kennedy, the manager, did Mrs. Kennedy have instructions [512] as to what to do in the event the refrigeration system became defective or operated improperly?

A. Yes.

Q. What instructions had you given her?

A. To call the refrigeration company whose name she had on file and whose telephone number she had on file.

Q. Did you give similar instructions to the other managers?

A. Yes.

Q. Did those instructions cover not only re-

(Testimony of Roy E. Hallberg.)

frigeration but other services in the apartment houses which might run into difficulty?

A. Yes.

Q. What other services?

A. Plumbing, for instance.

Q. There was some testimony by Mr. Richman to the effect that utility bills, particularly during the month of January, were not paid promptly when due.

Can you explain how that came about, Mr. Hallberg?

A. Well, I believe he was referring to December bills, wasn't he?

Q. Either December or January.

A. Well, we had a \$17,000.00 tax bill to pay in December. We had very little cash when we took over the building. And we did a little juggling of some of those [513] accounts payable in order to assure ourselves of enough to cover the tax payment.

Q. Because of the large tax payment that you mentioned that you deferred payment of those utility bills?

A. That is correct.

Q. I direct your attention to the general ledger, being one of the books of account which was kept by you during your period of receivership, and I am going to start about the point where Mr. Richman testified there were certain blank pages in this ledger.

Let's begin here with the account reflecting unemployment insurance premium. There is a break-

(Testimony of Roy E. Hallberg.)

down for five different apartment buildings, but no figures appear on that page.

Can you explain that to the court, if you please?

A. Why, yes. We set up the account here, not only for the immediate records—you understand, the books were mostly kept on a cash basis. We did not go back into the previous management to pick up the unexpired insurance and set it up.

Mr. Enright: I move to strike the witness' statement "We set it up", as a conclusion on his part.

The Court: Granted. Show who did it, if you think it is important.

The Witness: I worked on that and directed at that time [514] Mr. Harrison to set this up, so that these entries could be made at the proper time.

Q. (By Mr. Whyte): When was the proper time to make any entries in this unemployment insurance premium account?

A. Well, your unemployment insurance premiums are paid in advance. They are taken from the payments made to the individual people who are working for the trust. And at the end of three months those are supposed to be picked up. We hadn't reached that period yet.

Mr. Enright: I move to strike the answer on the ground it is a conclusion of the witness, when you break off a payment for this type of insurance where a receivership is involved, and he terminated his receivership at 5:00 p.m. February 28, 1954.

The Court: Denied.

(Testimony of Roy E. Hallberg.)

Mr. Whyte: The last statement was, "We hadn't reached that period yet."

Q. (By Mr. Whyte): When would that period have been reached, Mr. Hallberg?

A. In March.

Q. Sometime after February 28, 1954?

A. Yes.

Q. Turning to the next page in the ledger, which appears to be blank, headed "Prepaid Taxes," there is a breakdown for Canterbury, Fountain Manor, LaLoma, Oliver Cromwell, [515] and Western Arms, but no figures appearing on the page.

Can you explain why that page happens to be blank, Mr. Hallberg?

A. That was just put in there for the time that that account might be needed. We hadn't reached a point where it was needed.

Q. Is it good bookkeeping practice to set up an account for prepaid taxes in connection with keeping books of account of this character?

A. It is quite——

Mr. Enright: Objection is made on the ground it calls for a conclusion of this witness, what good bookkeeping practices are.

The Court: You might qualify him. I think you did it once before, I am not sure. Let's be sure; qualify him.

Mr. Whyte: Very well.

Q. (By Mr. Whyte): Mr. Hallberg, you are a graduate—tell me again from what university did

(Testimony of Roy E. Hallberg.)

you graduate? A. Northwestern University.

Q. What degree did you receive there?

A. Bachelor of Science in commerce.

Q. What training, if any, did you have in accounting?

A. I did two years' public accounting work out in the field.

Q. What accounting experience have you had in California? [516]

A. Oh, the experience I have had here is carrying our own records and our own books and the companies I was with, Hall Industries—I set that up back in Missouri—and at the present time I do have to go into books or records of various companies.

Q. Did you keep the books on account at the Morgan Construction Tooth Corporation?

A. I did that.

Q. And your two years of public accounting work out in the field, where was that carried on?

A. In Chicago.

Mr. Whyte: I submit that is sufficient qualification, your Honor. The man knows what good accounting practice is.

The Court: Ask your question then, based upon the foundation, and see what happens.

Q. (By Mr. Whyte): Based upon your experience that you have just related to the court, is it good accounting practice to set up an item for pre-paid taxes in books of account of this character?

Mr. Enright: To which objection is made on the

(Testimony of Roy E. Hallberg.)

ground it calls for a conclusion of the witness. The witness is not qualified.

The Court: Overruled.

The Witness: Ordinarily you try to set up accounts that [517] will be in use sometime during a fiscal period, and this was one item that quite often is used.

Q. (By Mr. Whyte): It is a good accounting practice? A. It is, definitely.

Q. Turning to the next sheet in the ledger, which is blank, "Utilities Deposits", will you explain why that sheet is blank?

A. There were no deposits made for utilities, so far as I know.

Q. Is it good accounting practice to anticipate the possibility there will be utility deposits and show that entry in your ledger?

Mr. Enright: Same objection.

The Witness: That was put——

Mr. Enright: Just a minute. I object on the ground it calls for a conclusion of this witness, what is good accounting practice.

The Court: We will have to consider it as a bookkeeping practice, rather than accounting practice. This man has qualified as to general commercial administration. He is qualified with respect to the bookkeeper's level, rather than the accountant's.

Q. (By Mr. Whyte): I will change my question to whether or not it is good bookkeeping practice to anticipate there may be utility deposits, to set

(Testimony of Roy E. Hallberg.)

up a sheet in your ledger to [518] pick up those items? A. It definitely is.

Q. The next sheet in the ledger, "Deposits Workmen's Compensation Insurance", contains several figures, so I will pass over that.

The next sheet, "Advances on Conditional Sales Contracts". That sheet appears to be blank.

Will you state why you set up the sheet for "Advances on Conditional Sales Contracts" and why it is blank?

A. It was conditional as for the operation of the building at—from time to time you may have to make a deposit, and there hadn't been any transaction that required it during our period.

Q. Is it good bookkeeping practice to anticipate there may be advances on conditional sales contracts in connection with the operation of apartment buildings? A. It is.

Mr. Enright: To which objection is made on the ground it calls for a conclusion of this witness.

The Court: Overruled. I take it that you would get the same answer as to each one of those pages, Mr. Whyte, so I hope you are not going to burden the record.

Mr. Whyte: I don't wish to, your Honor. I think as to some of these pages the answer will be that the entries are reflected in the journal. So far we haven't come to any [519] pages in which the entries are—he has explained why there are no entries in some instances, that the entries are re-

(Testimony of Roy E. Hallberg.)

flected in this other book of account which was kept.

The Court: Why not proceed to that class of entries then?

Q. (By Mr. Whyte): Let's just go over these briefly and you can state whether or not your answer would be the same or whether it would be different, because the entries are reflected in the journal.

Take the sheet "Notes and Accounts Payable", which contains various items on it.

I will pass that.

Mr. Enright: I will object to the question on the ground it assumes a fact not in evidence, he has a journal. His previous testimony was he had no journal.

The Court: You might lay a foundation.

The Witness: There was no previous testimony there wasn't a journal.

Mr. Whyte: Just keep quiet, Mr. Hallberg.

Mr. Enright: I will stand on the record of the witness' original testimony.

The Court: Let's have a foundation as of now, in any event, so that one can look back at the transcript of the questions you are asking, and find a foundation immediately before the sequence of questions. [520]

Q. (By Mr. Whyte): Mr. Hallberg, I direct your attention to this large black book. The pages are headed "Records of Journal Entries", and I will ask you to identify that book for me, please.

(Testimony of Roy E. Hallberg.)

Mr. Enright: Object on the ground it calls for a conclusion of the witness, as to identifying that book as it being a journal or otherwise. It is obvious he is attempting to have the witness to testify in his opinion it is a journal; he is not qualified.

The Court: Can't a bookkeeper testify in his opinion a book is a journal? Objection overruled.

Mr. Enright: I don't think so, as a matter of opinion.

The Witness: This definitely is a journal.

Q. (By Mr. Whyte): Was that book kept in your custody or control during the three-month period of the receivership? A. It was.

Q. Are the entries which are shown therein reflections of transactions which took place at or substantially about the time as they are reflected in this book?

A. Well, the journal is mostly used for transferring of amounts from one account to another. And it isn't a matter of a transaction at all.

Mr. Enright: I move to strike——

The Witness: Once in a while you do run into transactions that you do put in a journal. But these were mostly [521] closing and things like that.

Q. (By Mr. Whyte): I didn't make my question clear, Mr. Hallberg. As to the items which are shown in this journal, are those items placed in the book at or substantially near the time of the transaction which they purport to reflect?

A. Yes.

(Testimony of Roy E. Hallberg.)

Q. Is this book, which you have identified as a journal, one of the books which was kept in the regular course of your business as the Receiver of those apartment buildings? A. It is.

Q. Very well. Having laid the foundation, I will proceed here with the ledger.

The "Accounts Payable" sheet is blank. Is that blank for the reasons which you have heretofore specified, as to the preceding blank pages?

A. That is correct. Can I elaborate on this?

Your accounts payable on a cash basis, where you do not enter your bills as they come in, but enter them as they are paid, certain times when you want to close out the books you will lump them all together and enter them in your journal, and from there they are transferred to certain accounts where they are set up. They are afterwards reversed—entries are reversed and it is taken out as they are paid.

Q. I am going through the remaining pages, which [522] appear to be blank, and in the interest of saving time——

The Court: Mr. Whyte, where is this important to the immediate inquiry before the court?

Mr. Whyte: The impression was sought to be created by Mr. Richman these books had been set up in a way where pages had been left blank, as though nothing had been done.

Now, to the extent that the court thinks it is necessary—and I don't want to belabor the point—I want to show the reason why these pages were

(Testimony of Roy E. Hallberg.)

left blank and why nothing is shown on them. I don't want to go beyond what the court feels is necessary.

The Court: I don't feel it is necessary. The court is given to examining these documents, and while I would make a very poor bookkeeper, I have considerable theoretical information on the subject.

Mr. Whyte: If the court doesn't feel it is necessary that settles the matter.

No further examination, your Honor.

Cross Examination

Q. (By Mr. Enright): Mr. Hallberg, you didn't make any of these entries in this journal or ledger?

A. No, I did not. I had a bookkeeper doing that.

Q. Mr. Harrison?

A. Mr. Harrison and Miss Findeisen, yes. However, Mr. [523] Harrison did mighty little in that book.

Q. Oh, he did? Are you familiar with his handwriting?

A. Yes.

Q. Are you familiar with Miss Findeisen's handwriting?

A. Naturally.

Q. Miss Cosgrove's handwriting?

A. Yes.

Say, can I keep those here?

Mr. Whyte: What is this?

Mr. Enright: That is the one marked for identification, as soon as you examine it.

May this document be marked for identification?

The Clerk: Defendants' K for identification.

(Testimony of Roy E. Hallberg.)

(The document referred to was marked Defendants' Exhibit K for identification.)

Q. (By Mr. Enright): I direct your attention to Exhibit K for identification, and ask you if you can identify the handwriting appearing at the end of it? A. Yes.

Q. Whose handwriting is it?

A. Miss Cosgrove's.

Q. You received that document?

A. Yes, I saw this.

Q. Who is Miss Cosgrove?

A. Mrs. Hallberg. [524]

Q. You received this document about December 22, 1953?

A. I can't tell you the date now.

Q. Approximately that?

A. I wouldn't know. I saw it.

Q. Did you see the Paragraph 7, and I direct your attention to your previous testimony concerning the Oxyaire matter, and reading as follows:

"The Houdry catalyst for the Canterbury—Arthur Jan was at the C.A. yesterday wanting to make measurements. This morning I contacted Mr. Barney Manalis (the man who obtained the contracts from Mr. Richman). I explained Mr. Hallberg's appointment, and told him that both matters were in suspension for the time being;"

Did you see that?

Mr. Whyte: I am going to object to the witness being interrogated about his document, on the ground it is hearsay. This document purports to

(Testimony of Roy E. Hallberg.)

be a memorandum from Mr. Harrison. Mr. Harrison is not here.

The Court: It is merely a question of whether he saw it.

Mr. Enright: I will offer it in evidence. He has identified it.

The Court: It will be received.

(The document heretofore marked Defendants' Exhibit K was received in evidence.)

Q. (By Mr. Enright): Do you recollect the question just before Mr. Whyte interrupted?

A. Will you state it again?

Q. You recollect seeing this Paragraph 7 concerning the installation of the smog control equipment, as being under suspension for the time being?

A. Yes.

Q. Were you or were you not advised by Mr. Harrison that he had advised Oxyaire to suspend performance of that contract?

A. No.

Q. But you saw this document?

A. The only thing that was being held up for was the approval of Mr. Whyte.

Q. You saw the document?

A. Yes.

Q. It is from Mr. Harrison, isn't it?

A. That is correct.

Q. And your wife, Miss Cosgrove, signed it?

A. She didn't sign it. She just put a note on the bottom there.

Q. You received it about the time the document bears, the date?

A. I can't tell you now.

(Testimony of Roy E. Hallberg.)

Q. Were you in, about the apartments, during the week [526] of December 22nd?

A. I managed to get there quite often, yes.

Q. On the week end?

A. Sometimes on a week end. Sometimes during the week, as I told you before.

Q. You got there December 24th, the day before Christmas, didn't you?

A. That happened to be one day I was there.

Q. Now, directing your attention to the handwriting in this ledger, will you point out any portion of it that is not in Mr. Harrison's handwriting?

A. I can show you lots of it. There is a whole page not in his handwriting (indicating).

Q. Now you are referring to February 1954?

A. Here is some more (indicating).

Mr. Enright: May we have that one page——

Mr. Whyte: Let's identify the page for the record here.

Mr. Enright: Are you through?

Mr. Whyte: The witness is referring to a page headed "Month of February 1954", which seems to be page No. 8. This is a ledger?

Mr. Enright: Are you through, Mr. Whyte, if you please?

Mr. Whyte: I am merely trying to be helpful.

The Court: Are you through with this particular——

Mr. Whyte: I am all through. Go right ahead.

(Testimony of Roy E. Hallberg.)

Just so [527] the record shows what you are talking about.

Q. (By Mr. Enright): Now, Mr. Hallberg, you refer to a sheet No. 8 bearing an entry at the top, "Month of November 1954". A. All right.

Q. Just a moment, if you will, please, sir.

A. O.K.

Q. That pertains to the expenditures made for the month of February and the expenditures made under your direction on or about March 7th?

A. This does not contain all expenditures for the month of February.

Q. My question wasn't whether it contained all the expenditures for February. It pertains to the expenditures made about March 7th or after the telephone call on a Sunday evening, and you directed someone there to issue checks covering indebtedness incurred during February, doesn't it?

A. That is correct, yes.

Q. Now, whose handwriting is that?

A. Miss Findeisen's.

Q. Miss Findeisen's? A. Yes.

Q. You are referring to page 7, also?

A. Yes.

Q. Whose handwriting is that? [528]

A. Miss Findeisen's.

Q. And that involves the expenditures made after February 28th, does it not, 1954?

A. No.

Q. Now, your first check was No. 332, wasn't it?

A. Yes.

(Testimony of Roy E. Hallberg.)

Q. That involved an expenditure on February 1, 1954? A. That is right.

Q. Who drew that check?

A. That looks like Harrison's.

Q. Yes. And it covers checks down to 366, doesn't it? A. That is correct.

Q. Now, the checks after check No. 370 were drawn by whom?

A. That was Miss Findeisen's.

Q. Was that in her handwriting, the stubs?

A. Yes.

Q. I direct your attention to stubs 372 to 374. Tell me whose handwriting that is.

A. Miss Findeisen's.

Q. The next, 375 through 377.

A. Same.

Q. 378 through 380. A. Same.

Q. 381 through 383. [529] A. Yes.

Q. Is Miss Findeisen's? A. Yes.

Q. 384 through 386.

A. Miss Findeisen's.

Q. Will you turn the pages and state whether or not any of those checks were drawn by Miss Findeisen?

A. Checks are all in her handwriting.

Q. Just a moment. All of them through the end of that book, the stubs? A. Yes, they are.

Q. All right. Now, I direct your attention to the Citizens Bank stub of the check issued. Whose handwriting is this? A. Miss Cosgrove's.

(Testimony of Roy E. Hallberg.)

Q. Now, I want to refer back to Citizen's Bank check No. 482, the stub. Who drew that check?

A. Miss Cosgrove wrote that one out.

Q. Did she write out the checks after that date, commencing with 483, the check dated March 8, 1954?

A. Will you state that again?

Q. Did Miss Cosgrove draw the checks commencing with No. 483 on——

A. She drew that one.

Q. 484, did she draw that one? [530]

A. She did.

Q. Did she draw all the checks thereafter appearing in this Citizens Bank statement through check stub No. 500? A. Apparently she did.

Q. Now, those were the checks covering the approximate six thousand dollars paid after March 7th? A. Yes.

Q. Miss Cosgrove drew those?

A. She drew those that you—the stubs you showed me there, she wrote.

Q. Now, directing your attention to the stubs for Nos. 501 through 508,——

Mr. Whyte: Do you want to identify that as a Citizens Bank book, too, Mr. Enright?

Mr. Enright: Being stubs Nos. 501 through 508 of the Receiver.

The Court: Mr. Enright, I am wondering how this fits in as proper cross examination.

Mr. Enright: Rendition of services.

(Testimony of Roy E. Hallberg.)

The Court: Wasn't that what the man went into on his principal case and on this rebuttal he is called here to simply give his conversation of a certain limited few transactions which had been testified to against him?

We are not going to reopen the entire examination of his services now. [531]

Mr. Enright: It is to rebut what I conceive to be the Receiver's conclusion that he rendered services in preparing these books and records.

I want to demonstate that he rendered himself, so far as he is concerned, no services. A Miss Cosgrove drew some checks for him after he, the Receiver, had phoned you, your Honor, on March 7th, Sunday evening, and then they went out there and his wife, Mrs. Hallberg, wrote some checks, and that, I say, is not rendering services as a Receiver.

The Court: If you will have the various handwritings identified, I will run through those and see who wrote what.

Mr. Enright: That is what I was doing at the very time——

The Court: Let's not take these checks seriatim. We will be here all day on this case, and I have a jury coming in at 1:30.

Mr. Enright: There are only these remaining checks.

Q. (By Mr. Enright): Mr. Hallberg, isn't it correct that the checks 501 through 527 is the total of the checks you had issued?

(Testimony of Roy E. Hallberg.)

A. These were written by Miss Cosgrove, as I said before.

Q. Now, directing your attention to check No. 519, that is for \$123.88, is that correct?

A. That is right. [532]

Q. And that was issued to Jean Findeisen?

A. That is right.

Q. Was that for payment for her services for working——

Mr. Whyte: Again I am going to object. This is not proper cross examination; outside the scope of the direct examination.

The Court: Sustained.

Mr. Enright: I offer to prove through the witness that he has paid a sum of money for the making and issuing of these checks, the services rendered after March 1st, through this canceled check.

I will next ask that a check here be marked for identification.

The Clerk: Defendants' L.

(The document referred to was marked Defendants' Exhibit L for identification.)

Q. (By Mr. Enright): Directing your attention to Defendants' L for identification, do you recognize the handwriting upon that document?

A. Yes.

Mr. Whyte: Same objection, outside the scope of the direct examination.

The Court: I will allow this one.

Q. (By Mr. Enright): Now, you identified the handwriting on the face of the document. I direct

(Testimony of Roy E. Hallberg.)

your attention to the [533] endorsement. Whose handwriting is that?

A. Must be Jean Findeisen.

Q. Do you know?

The Court: Do you recognize it?

The Witness: I recognize—it is apparently in her handwriting. I wasn't there when she signed it.

The Court: It looks like her handwriting?

The Witness: It does.

Q. (By Mr. Enright): She received that sum of money? A. Yes.

Q. She rendered services attending to the books of the receivership for the sum of money evidenced by this check? A. Yes.

Mr. Enright: I offer Exhibit L in evidence.

The Court: Received into evidence, although it seems to me it is proving what has already been proven. Generally speaking, it is sufficient to prove a matter once.

(The document heretofore marked Defendants' Exhibit L was received in evidence.)

Mr. Enright: No further questions.

Mr. Whyte: I have just two questions, your Honor.

Redirect Examination

Q. (By Mr. Whyte): Mr. Hallberg, you recollect about when you gave me, as your attorney, the contracts which Mr. Richman had entered [534] into with the Air Pollution Control, Incorporated, for examination by me?

Mr. Enright: Objected to as improper redirect.

(Testimony of Roy E. Hallberg.)

There has been testimony on it at least twice, once through Mr. Hallberg and once through Mr. Whyte.

The Court: Sustained. I would like to have the Receiver's explanation, though, of the delay in having the air pollution control work done.

Would you like to tell me in a few words what brought about a delay and how come you got cited into court?

The Witness: The contracts were returned by Mr. Whyte with the statement that it was perfectly in order and to go ahead. I gave the—everything I had to Mr. Harrison and told him to mail that to the manufacturer of the smog control unit.

About the time that—that, incidentally, was about the 1st of January. Two weeks later, when I received the warning notice, I asked Mr. Harrison about it and he brought out the blueprints out of the file; they had not been mailed. At this time I told him to get them over there immediately, and explained also that that should have been done at the time I first directed him to mail them. It caused a week and a half or two weeks' delay right then and there.

The Court: Was anyone ever fined or was any financial penalty exacted from the trust because of the delay? [535]

The Witness; None whatsoever.

The Court: That is all I have.

Mr. Enright: You seek extraordinary fees for that service.

(Testimony of Roy E. Hallberg.)

Mr. Whyte: Objected to. The document which was filed with the court will speak for itself.

The Court: Objection sustained. I understand that the Receiver asks for a reasonable fee covering everything, and Mr. Whyte has broken his down into ordinary and extraordinary.

Mr. Whyte: No further questions of Mr. Hallberg, unless the court has something more.

Mr. Enright: I have something more.

Recross Examination

Q. (By Mr. Enright): You made no entries in your diary, did you, concerning this January 1st or approximately January 1st attention to the Oxyaire matter, did you, that you have just testified to?

A. Apparently not, although at the time I explained to you all entries were not made there. I didn't go into detail on every little matter.

Q. You did make an entry on January 13th, "Received notice re Oliver Cromwell incinerator. Oxyaire vice president said he would handle with authorities. Urged him to get on our job. Said drawings not received." [536]

Did you make that entry?

A. I did. That is when I found they hadn't been sent.

Q. You didn't transmit the drawings until January 22nd, as shown by Exhibit P?

A. I told Harrison at the time to get those over and in two days later—three days later I found

(Testimony of Roy E. Hallberg.)

they hadn't been sent, and I dictated a letter and we got them on the way.

Q. You signed this letter that states, "This letter will confirm Mr. Harrison's telephone conversation with you on January 15th"? A. Yes.

Mr. Enright: I have no further questions.

The Court: All right, Mr. Hallberg. [537]

* * * * *

Los Angeles, Friday, June 18, 1954, 9:00 a.m.

The Court: Good morning.

This is a day we have 30 minutes' argument on each side. How do you want to divide it, 30 minutes in a stretch or have an opening and then a reply?

Mr. Whyte: I prefer to open and close.

The Court: Proceed to open. We also have a jury trial on here today, which will make it necessary for us to keep ourselves to the hour, and we had better take up that matter with Mr. Camusi on Monday.

Mr. Whyte: Before I commence, your Honor, may I ask for instructions with reference to two bills which have been contracted by the Receiver. One in the sum of \$89.20 for one copy of the depositions of Roy Hallberg and John Whyte.

The other in the sum of \$100.00 as the fee to be paid to the expert witness, Mr. Mann, who appeared here on behalf of Mr. Hallberg and testified as to the reasonable value of his services.

The Court: What are the depositions?

Mr. Whyte: You mean which depositions were they?

The Court: Yes.

Mr. Whyte: They were depositions of Mr. Hallberg and myself, which were taken by Mr. Enright, and we requested one copy. [541]

The Court: Well, you had better coast on your credit for a little while, and I will give you instructions when this case is decided.

Mr. Whyte: Very well. I feel that the court has a very adequate picture of the testimony which has been presented at this hearing. I am not going to take much time.

I simply want to point to three or four of the salient features of the testimony and some of the points which were stressed in the objection filed by the defendant Richman.

Let me turn to page 7 of the Objections filed by the defendant and refer there to the matters for which the Receiver was originally attempted to be surcharged. Those matters are three in number, that is to say, the principal ones are three in number.

First of all, that the Receiver failed and neglected to collect rents from the five apartment house managers for February 26, 27, and 28, 1954. That sum was approximately \$1,200.00, I believe.

Secondly, that the Receiver did not collect petty cash funds in the hands of the managers in the sum of \$785.00.

Thirdly, that the Receiver made a payment on the trust deed note covering the Oliver Cromwell,

which was due March 1, 1954, in the sum of \$2,-027.25.

Much stress was laid upon those during the course of the testimony. Let me say right now that since it has been conceded [542] by the defendants that they are not attempting to surcharge Mr. Hallberg personally for those amounts, but that they will look to the funds in the bank account to make them whole, in the event that this court finds they should be made whole, as between themselves and the plaintiff Mrs. Tidwell.

In view of that posture of the case, any dereliction of duty on the part of Mr. Hallberg in this connection would go simply to a diminution of his fees.

Since he is not being surcharged personally, anything that he may have done that was wrong in this connection can simply operate to reduce the amount of the fee which the court will otherwise allow.

Let's take up each item individually and see whether Mr. Hallberg did do anything wrong, was he negligent, was he ineffective in any manner.

First of all, as to the collection of the rents for February 26, 27, and 28, the court will recall the testimony of both Mrs. Hallberg and Mr. Hallberg to the effect that Mr. Udall, the manager for Mrs. Tidwell, stated on Sunday afternoon, February 28th, that the managers were not to permit the Hallbergs to pick up those rents. In other words, they were prevented by the act of Mrs. Tidwell's agents from collecting the rents for that period.

Secondly, let me turn to the deposition of Mr. Hallberg, at page 106, line 13: [543]

“Q. ‘The Western Arms and the Canterbury managers reported that they had so much outstanding they would prefer to make the collections over the week end. It is not good business to make collections when the banks are closed. The apartment houses had safes for safekeeping the receipts, whereas the Receiver’s office had none. The Receiver was advised by his attorney to act in no capacity the morning of March 1st, Monday, and consequently the March 1st funds on hand could not be picked up. The Receiver’s report mentioned this fact only in relation to the total receipts for February not being complete for comparative purposes.’

“Now, is that the reason, as stated here, why you did not pick up the moneys from the two apartments on March 1st?

“A. That’s right.”

In other words, both because the plaintiff’s agent refused to allow the Hallbergs to pick up the rents and so instructed the managers, and because there were no adequate facilities for keeping large amounts of money over the week end, moneys couldn’t be deposited in the bank. There was no safe at the Receiver’s office at the Oliver Cromwell.

Under those circumstances, I submit that the Receiver [544] has done nothing wrong with respect to his failure to pick up those rents. In any event, no one is hurt. The money is in the bank, sufficient to take care of those payments. There is

no harm done. There is no damage done. Why should the Receiver be penalized?

Secondly, as to the petty cash fund, the terms of the order removing the Receiver from his active duties of management specified that he was to retain moneys in the bank and under his control. That order was given to me to interpret. I advised the Receiver that the money in the bank should be retained by him.

As to the petty cash fund, I was of the opinion that they constituted part of the operating assets of the apartment houses. That the operation of those apartment houses was to continue. That it was, as I interpreted the order, the intention of the parties they desired the operation of the apartment houses should continue in a smooth fashion.

You recall the testimony of Mrs. Kennedy, the manager of the Western Arms Apartment House, as to what those petty cash funds were used for. She said they were used for key refunds, little bills, containers for the can man who evidently picked up the garbage, extra help, and employees from employment agencies, washing windows and walls.

I submit to your Honor that those funds were necessary to the continuance of the operation of these apartment houses. [545] That for that reason the Receiver properly interpreted the order of the court which had its purpose, its basic purpose to permit the operating, the continuance of the operation of the apartment houses, and at the same time to insure control by the Receiver of such money to

pay his attorney fees and any other items which may arise.

Finally, as to the third item, that is to say, the payment on the Oliver Cromwell trust deed, that payment was made, and I believe the check was dated on the 27th of *November*. At that time the Receiver had full power to make that payment. His powers did not terminate until 5:00 o'clock p.m. on the 28th, Sunday.

Mr. Richman himself testified that during the time he was in control of the receivership he had on several occasions made the payments, which fell due on the 1st of the month, before the 1st of the month arrived. I submit that it was a perfectly prudent payment for the Receiver to make, that he should pay an obligation falling due on the 1st of March by a check dated on the 27th of February.

Again, what harm has been done? That was an obligation of this estate, that had to be paid by somebody. If it has inured improperly to the benefit of Mrs. Tidwell, that matter can be adjusted through the moneys in the bank account and through the hearing which your Honor is about to hold, to adjust the rights of Tidwell and Richman. [546]

So I say as to each and every one of those items no harm has been done. Unless your Honor feels that the Receiver has acted negligently in some way, his fees should not be affected.

Let me say just a word about this smog control matter over which Mr. Enright and Mr. Richman made so much. The Receiver told a straightforward

story, which was not contradicted in any way. He testified that he furnished me with the files and contracts the day before Christmas 1953. That I examined those, sent them back to him and told him that the contracts were binding, that he should proceed to have the installation made.

The plans had been furnished to him by Mr. Richman sometime during the latter part of December of 1953. On or about the 1st of January, or shortly thereafter, he instructed Mr. Harrison to send those plans to the Air Pollution Control, Inc. Mr. Harrison did not do so. There was no denial of that testimony. Mr. Harrison did not appear here and deny it.

On or about the 14th or 15th of the month a warning notice was received from the Smog Control authorities. At that point, where Hallberg discovered the plans had not been sent, he asked Mr. Harrison to send them. He asked Mr. Harrison to call the Smog Control authorities, or, rather he asked him to call the Oxyaire group.

Mr. Harrison talked with Mr. Manalis. Mr. Manalis was [547] to do something about it. Then the criminal citation was issued at the end of the month. The hearing was held and subsequently the complaint was dismissed. No fine was ever levied against this estate, no damage was done to anybody except the expenditure of some time and effort in appearing in court and having the proceedings dismissed.

Your Honor will recall the testimony of Mr. Manalis, the vice president of the Oxyaire, or Air

Pollution Control, Inc. He stated positively on cross examination that for ten days to two weeks prior to January 15th, and for three to four weeks thereafter his company was in short supply of a metal which was necessary to this installation. In short, his company could not have made the installation during an extended period of over one month, from on or about January 1st, until after the 1st of February.

Under those circumstances, if the Receiver failed to notify the Oxyaire people promptly, his negligence in that respect, if any, did not proximately cause the result, for the installation could not have been made in any event, because the Oxyaire people couldn't make it.

One further word about what was said about the Receiver's negligence in not visiting the apartment houses often enough, that he wasn't on the job, the court heard the testimony of Mrs. Lipphardt, the manager of Fountain Manor. She said Mr. Hallberg was in her apartment building between seven and [548] twelve times.

Does that sound to the court as though the Receiver wasn't on the job?

Furthermore, the Receiver had a competent bookkeeper. He had his wife, who three times a week picked up these rents and deposited them in the bank. He had help, admittedly, which was competent and which did a good job for him, just like Mr. Richman had competent help when he was in control.

During the last year in which Mr. Richman ran

these properties, he testified he had many other things, he had other things in his office. He was away from the office and in court on numerous occasions in connection with the trial of this case. He conferred with his attorneys regarding strategy. Surely, he didn't devote a hundred per cent of his time to the management of these properties.

Admittedly, neither did Mr. Hallberg, but he did a good job, and the report he rendered shows it. He carried on through himself and his agents competently.

Now, as to the amount of his fees, again there was uncontradicted testimony in the record by an expert witness, that it is customary and usual in this area for apartment house or for managers of real properties of this nature to receive five per cent of gross rents. That, of course, is substantially below what Mr. Richman received. [549]

I will attempt to draw no parallel with Mr. Richman, because the court has already decided that Mr. Richman's fee was excessive. But just a word as to my own fees in the matter.

I have one case for the court which I might cite. This case is *Missouri & K. I. Ry. Co. vs. Edson*. It is an Eighth Circuit case. The opinion was written by Judge Sanborn, and it is reported in 224 Fed., page 79. That case holds, and I will simply state the question which was presented on the first page of the opinion:

"May a court of equity lawfully allow and pay out of the trust funds into the hands of a receiver it has appointed his necessary counsel fees for de-

fending himself against baseless charges of malfeasance in the discharge of his duties as receiver, * * *

The court gave an affirmative answer to that question and an opinion of some three or four pages, and developed the matter rather carefully.

The court, I am sure, in its own discretion, will fix an adequate fee for both the Receiver and his attorney. There is testimony in the record as to the value of the attorney's fees. Mr. Laugharn testified a thousand dollars a month should be proper as to the advising of the Receiver during the receivership.

Mr. Fussell, who appeared here later in the testimony, [550] was of the opinion that from \$1,000.00 to \$1,200.00 was proper insofar as the defense of the Receiver against the charges laid against him by the defendant were concerned.

I would like to reserve whatever time I have left to answer anything that may be said by Mr. Enright.

Mr. Enright: May it please the court, a fair reading of the report of the Receiver would in no manner divulge that the \$2,000.00 paid upon the Oliver Cromwell, March installment, was a March obligation.

A fair reading of the report of the Receiver will result in the conclusion that there is a concealment of the facts that \$785.00 petty cash is funds under the control of the Receiver.

A fair reading of the report will in no manner divulge that there was \$1,290.00 rents that he failed

to collect. He didn't recite that as being something that was still belonging to the fund.

The only thing he said was there was \$2,000.00, not \$1,290.00.

Now, let us not for one moment think that we uselessly filed our objections here. We filed them because there were those three specific items that were conferred upon and given to the plaintiff, and the Receiver improperly did it and had his attorney analyzed it in any manner the order of February 26th he would have to have told the Receiver, "That is petty [551] cash that is under your control. Keep it."

That man wants to be paid \$60.00 an hour or \$30.00 or \$33.00 an hour for that kind of advice. He wants \$3,000.00 ordinary fees.

Let's get this straight once and for all, so far as I am concerned I doubt sincerely whether an attorney, a pure ordinary attorney, rendering only legal services, is worth \$30.00 an hour. I don't care who he is. They are not worth it in the industry.

I speak of basic industries, cement, packing, textiles, garment, and oil, and all the other basic industries. They just don't pay that kind of money for legal services. They might pay it because some attorney has some financial connection, or on some other basis, for services, but for pure rendition of legal services they are not entitled to that amount of money.

I don't want to argue any more about attorneys' fees. If he feels he is entitled to \$3,000.00 for or-

dinary services, \$1,000.00 a month, for going out three days before the Receiver was qualified and telling that Receiver to stop bank accounts and telling the Receiver to go to apartment houses and take moneys before the Receiver had even qualified, and if he expects to be paid \$30.00 an hour for those eleven hours, then I say that would be a complete abuse of discretion and a miscarriage of justice.

I once heard—I don't know the authority for it, but it is quite apropos—the law isn't yet that the rabbits can decide how much cabbage will be left for the owner. Mr. Whyte is no more than any other rabbit. If he thinks he is going to eat up this fund at the rate of \$1,000.00 a month, plus extraordinary services, I am sure your Honor won't go along with that proposition.

We have not levied our objections to the Receiver's failure to collect the petty cash and to collect those rents. We must first go through the Receiver and have an order of this court that that Receiver should have collected that money, because that was the order of this court, to collect that money on February 26th. At 5:00 p.m. February 28th he was to continue to collect those rents.

Now, once the court orders that the Receiver should have, then our rights are protected. I am not interested in going through an endless chain of litigation, so the objections were well taken and properly taken.

But, your Honor, that wasn't the most serious aspect of this thing. I filed a memorandum of points and authorities in support of my objections,

because I feel it my duty to a court to submit authority for what I say or what I propose. And I cited this case of *Cake vs. Mohun*, 164 U.S. 311, because it is one of the earliest cases, and I like to cite the earliest and the latest Supreme Court or leading [553] authority, so the court will know what the law was at the beginning and at the end of our jurisprudence. There the court said:

“In view of the fact that the receiver had never been in the hotel business; that he employed a manager at \$125.00, and a part of the time at \$150.00 a month, and required of him a bond for the faithful performance of his duties; that he was not prevented from giving his usual attention to his business, and ordinarily spent only his evenings at the hotel,—we are bound to say that, if it had been an original question, we should have fixed his compensation at a considerably less amount.”

Then the Supreme Court goes on to explain that we must be reasonable, to protect the Receiver's just compensation, and to protect the owner of the assets. Those words are apropos here.

Here we have a Receiver that paid \$1,800.00 during a period of three months for Mr. Harrison and Miss Findeisen. He had five managers, and he was supposed to devote his time to the attention of these properties. He only spent his week ends.

There is only one reasonable deduction that can be drawn from this, that he spent his week ends. There isn't [554] much conflict in the evidence.

As the receiver in the Supreme Court decision spent his evenings—didn't interfere with his other

business—so this Receiver spent some week ends.

Now, a more recent case is *In Re Pittsburg, S. & N.R. Co.*, 75 Fed. Supp. 292. The court had this to say, as to what should be considered in fixing the fees:

“The considerations that should be controlling with the court in fixing compensation are the nature of the matters administered, the amount involved, the complications attending it, the amount of bond required, the time spent, the labor and skill needed or expended, the degree of success attained under all circumstances, the fidelity to details, the appreciation evidenced as to the responsibilities of the position, the character of said responsibilities, the expedition with which the trust has been administered, in view of results reached, and the method, character, and promptness of the accounting, having regard, as a standard, to what is paid for somewhat similar services in the performance of official duties. * * * The value of the services rendered should not be considered generally but only with reference to the trust administered.”

Now, let's apply that statement of the court to what occurred here. Mr. Hallberg was employed by the County of Orange at \$355.00 a month. He didn't disclose it to anybody, not even his attorney or this court.

He was supposed to spend 40 hours a workweek there, and I am sure he did, beginning a new job.

His wife, Miss Cosgrove, expended some time in picking up the money three times a week. Now, was that fidelity to the details on the part of Mr.

Hallberg? He wasn't available when the gas broke in the Western Arms refrigeration.

I have considerable difficulty, your Honor, in reconciling Mr. Hallberg's conduct in this matter, and I submit it is to be taken into consideration in fixing compensation. His time spent was nominal.

Now, another authority that is very clear, and it, too, is quite recent, is *In Re Insull Utility Investments*, 6 Fed. Supp. 653, at 661, affirmed in 74 Fed. (2d) 510.

The report spoke of the receiver's prior experience and knowledge in these words:

"Another matter—Does the performance of the receivership call for special knowledge and special training? If so, does the receiver who is appointed qualify? A single illustration will suffice. A president of a railroad has reached his position after 40 years of service. He has devoted his entire [556] life and all his time to transportation business. His road goes into receivership, and he is named receiver. He continues to devote his entire time, and his experience is as valuable as a receiver as it was as president of the railroad. Under such circumstances, the court must of course consider the compensation which the appointee received as president of the railroad. The same applies to the receiver of any other utility. If the appointee be an engineer or an operator, whose years of experience especially qualify him and he has technical training supplementing such experience, and he gives all of his time to the task, he should be paid more than one who, though entitled to the

confidence of the court, is not equally qualified to render the service for which the technical experience of the engineer qualifies him.”

Now, let's see what happened in this matter. Mr. Hallberg represented to this court that he had years of experience.

“Mr. Hallberg was for some years associated with a property management operation in Chicago, and has considerable acquaintance and experience in that type of work. Since coming to California he has held various positions with different types [557] of corporations, and has been engaged in the management of property for elderly relatives who have considerable apartment property in Southern California.

“I called him and found that he is available, and I asked him to come in here at about 2:00 o'clock today, so that counsel could meet him.”

Now, he continued on a few minutes later and reaffirmed those representations. The facts are, your Honor, by his own admission—and there is no conflict in the evidence—in 1931 he was involved as an employee of a bondholder of a defunct bank in Chicago.

In 1947 he landed here in California, according to his own admission, and he bought two homes, one house at 85 and the other across the street, and then he invested \$18,000.00 in the Morgan Construction Tooth and drew a hundred dollars a week for a few months, and then he went down to Narmco and drew \$350.00 a month, as he said, assistant to the president, selling fishing poles, and

then he went to work over at the County of Orange.

And, remember, your Honor, he represented to me and to your Honor he had the time available to take on this receivership. Three days, after making that representation in the chambers of this court, he took a full-time job down at [558] the County of Orange.

Now, your Honor, I know the man testified that for about four years he made \$40,000.00 a year in the marketing of wine in New York, or vineyards, and it was before 1947. I don't know what the nature of his services were. I know this, that in the wording of this court's decision he didn't have the qualifications to be a manager of apartment house property in this area. His little diary of data, furnished to him by Miss Cosgrove, evidences very clearly that he knew very little about apartment house management.

Now, under those circumstances, I submit that the man is in this court with very, very unclean hands, to say the least. I know your Honor sought him out to be appointed, but, on the other hand, I say that he should have at least made a full and complete disclosure to your Honor before you confided in him and appointed him.

He drew \$355.00 a month for his services in the County of Orange. He came up here on a few week ends. He sent his wife up here to pick up these rents and deposit them in the bank, and that is about all he did do.

Now, the rule is clear, that the compensation to be paid a receiver is not the compensation or the

rate of compensation paid in private industry. I don't know whether I agree with it or not, but, in any event, the appellate courts have laid down the rule that public officials are not [559] compensated at the same rate as private individuals in private industry. Their rates are lower. That is especially true, I think, in the federal judiciary. Whether it should be that way or not, nevertheless it is a fact.

This man had no risk of any kind or nature on his part. As a matter of fact, Mr. Whyte's diary and the testimony entered in this record shows that your Honor interceded to a degree in obtaining the man's bond for him when he was qualifying, technically qualifying.

Now, they put on an expert witness here at five per cent for a property manager who furnishes everything, who furnishes the Harrison's, the Findeisens, who furnishes the office, who furnishes the telephone, who furnishes all the facilities. It isn't five per cent according to their own expert and the Realty Board at Los Angeles. It is five per cent for collections under \$2,000.00 and it is three per cent for collections over \$2,000.00.

The rents here were far in excess of \$2,000.00 a month. Assuming he had had the qualifications to be a property manager, none of which he had because his only experience in apartment house property, except this incident back in '31 in Chicago, was that he and his wife, Miss Cosgrove, acquired a 14-unit apartment house in 1949, December, and sold it in November 1950. There is no conflict in the evidence on that. Eleven months' ex-

perience with one apartment [560] over there. Does that qualify one any more than this trial has qualified me to be a property manager, and I think I have learned quite a bit during the course of this trial and hearing concerning apartment house managing.

Now, the time the receiver devotes to the administration was commented on in the Insull case. There the court said another important factor in the compensation of the receiver is the time devoted to the work and the character of the work performed.

This man devoted very little time. He was here when he qualified, the first two or three days after the appointment. Then he went to work on a Wednesday down at the County of Orange.

He was here the day before he appeared before this court in support of a petition for authority to renovate and remodel the apartments. He appeared for his fees hearing.

Now, under these circumstances, that is, first, a receiver who undertook to devote his entire time—that is the only reasonable deduction that can be taken from this record at the time of his appointment—who devotes only week ends, at most, and an occasional weekday, who represents that he had qualifications, long years of experience, what compensation is to be paid him is the question. And so far as I am concerned, I am not going to conjecture or speculate or state what I think he should be paid. He refused to [561] express his opinion from the witness stand.

He has been paid \$355.00 each month by the County of Orange. I suppose they should be allowed their expense money or allowed something, but integrity and no concealment is the first basis of all executive employment. You must have integrity first, before you are ever employed. And I submit that it should be considered in fixing his fees.

So far as the attorney's fees are concerned, there was a true base claim, not a basis claim, of objecting to this accounting, and I can't see the wisdom nor the justice nor the reasonableness of any rule of law that will permit a man to come into court and say, "I want \$3,000.00 for my services and if you don't pay them to me you will pay me another thousand dollars, if you object to my \$3,000.00," and that is the net effect of their argument.

They want now \$3,000.00 for ordinary fees. They want extraordinary fees on that smog matter, which I won't further discuss. The record is in black and white.

Then on top of that, they want another thousand dollars for attorney's fees because we objected to paying \$3,000.00 plus extraordinary.

Thank you, your Honor.

The Court: Now, Mr. Camusi, we didn't finish our jury trial yesterday, so I will have that jury back here to finish it this morning. [562]

Can you go forward with the pretrial matter of the Tidwell vs. Richman phase of this case on Monday afternoon?

Mr. Camusi: Yes, that is wonderful. I was going

to ask if I could be excused at 11:00. I have a matter I just can't put over.

The Court: We will continue that phase of this hearing until Monday afternoon.

Mr. Camusi: Your Honor, I am sorry again, but we are starting a will contest case in Orange County Monday. These last three months have been just all out of proportion to what a man can do. I don't know what to say.

The Court: How long do you think the will contest is going to take?

Mr. Camusi: We have estimated it won't exceed ten trial days, and it is a good chance it will be considerably less.

The Court: What about your time, Mr. Enright?

Mr. Enright: Well, I am always available at the convenience of the court. There are three or more members in the firm of Mr. Camusi. They have participated in this proceeding throughout, and I am quite sure one of them can be here. It has always been my experience, in appearing in this court and the other federal divisions of this court, my calendar must be inconvenienced to it.

I feel this matter is one well briefed already. There is very little left, if anything, to be considered on the pretrial. [563]

They have submitted their memorandum, and mine, I think we can stipulate to a few facts, and the matter is submitted to your Honor.

The Court: Can't Mr. Martin or someone else take care——

Mr. Camusi: It has been so bad we have been

about ready to send the secretaries up to try some of the cases. We have five men in the office and we have just been terribly busy. I don't know why it has happened, but the last two months we have just been unable to cope with all the case load we have.

It is one of those unfortunate things, where we haven't been able to put over hardly anything.

The Court: Who is going to try the will contest?

Mr. Camusi: There again we have a very young man in the office who has done all the work on it, and I am coming in the last minute to sit and hold his hand.

The Court: You can start holding it Tuesday morning. We will continue the pretrial on this case until Monday at 2:00.

Mr. Camusi: Your Honor, we are defending a half-million dollar estate, and this boy has been practicing for a year.

The Court: It is going to be the first day of trial and it is his responsibility, and you are going to hold his hand.

We will require someone of your side of the case be here [564] at 2:00 o'clock on Monday.

All right, Mr. Whyte.

Mr. Camusi: Am I excused then, your Honor?

The Court: Yes.

Mr. Whyte: I am certain that the court recognized that Mr. Enright's statement was replete with misstatements of the facts produced in the testimony before this court.

Just to give your Honor a pattern of the dis-

tortion which he represented here, he stated, for example, that the Receiver came in only on week ends. That was denied by the Receiver many times, when that question was put to him by Mr. Enright.

Mr. Hallberg testified positively he came in on occasions during the week, and even worked nights. He stated that two or three days before the Receiver was qualified I went out, I think he said three or four days I went out with him and instructed him to pick up moneys from the apartment house managers, and in that connection spent eleven hours, I note from my time slip, for that day, which was the day before the Receiver was qualified, which was on December 1st—the Receiver was qualified on the 2nd—and I spent about six hours going around with the Receiver and going over to the Union Bank.

He spoke about the Receiver's lack of experience, the only experience he had had was running these properties back [565] in Chicago. Of course, he completely left out of consideration the fact the Receiver had a 16-unit house down here in Pasadena, and another four-unit apartment house in Pasadena. The Receiver and his wife got in and did the actual physical work at those properties, painted, renovated, carpeted.

I think this court was extremely fortunate to have obtained a man of Mr. Hallberg's background and capabilities to fill this job, and I say that in all sincerity.

Mr. Enright talks about the lack of time that Mr. Hallberg put in. What results did he accomp-

lish? That is the testimony. Did he run this thing in a negligent, poor fashion?

Now, let's see how his stewardship compared with Mr. Richman's.

When Mr. Hallberg went in there, there were apartments which hadn't been painted for years. He came into this court and petitioned for authority to revonate. That order was granted. He and his wife saw to the decorating of these apartments and the repainting of them. Mr. Richman didn't do anything like that.

So far as I know, he didn't come into this court with petitions for authority to renovate and raise the standard of these apartments.

The Court: Wasn't it a judicially administered trust?

Mr. Whyte: In any event, Mr. Hallberg was on the job [566] sufficiently to see, in order to keep up the vacancy factor in these apartments and get the maximum for them, that you had to improve the apartments, and he did it.

Secondly, the vacancies were reduced out at the Western Arms Apartment, alone during the first month that Mr. Hallberg took over, from eight to three. Does that look like a poor job of managing apartment buildings?

Finally, Mr. Richman testified that the rents for a comparable period, under his stewardship, were, I believe, \$2,300.00 more from December 1, 1952, to February 28, 1953. If Mr. Hallberg was doing a poor job of managing these apartment houses, how was he able to keep the total rents which he

took in within some two thousand dollars of what Mr. Richmann took in during a comparable period? No telling what the basic economic conditions governing apartment houses might have been during both periods.

In other words, the fact that the Receiver may not have been on the job full time, which we admit, is not the important or controlling factor here. He had responsible agents who were on the job. The results which he accomplished testify to the facts that his administration was a successful one.

As to the nature of his fees, I am sure this court won't overlook the fact this Receiver was dealing with an estate valued at a million two hundred thousand dollars. The Receiver was obligated on a \$75,000.00 bond. When a man undertakes [567] an obligation of that sort, surely, the responsibility which he assumes is worth something, insofar as the compensation which should be awarded him is concerned.

I won't dignify some of Mr. Enright's remarks with reference to my fees. He seems to think that \$30.00 an hour is entirely out of line, despite the testimony of the expert witnesses. I recall Mr. Hubert Morrow, one of the deans of the Bar, testifying in Judge Hall's court, and other attorneys of O'Melveny & Myers, in connection with the Federal Home Loan Bank litigation. They said the services per hour of Mr. Works and Mr. Fussell were \$50.00 an hour, and the value of my services was \$30.00 an hour. That represented the testimony of one of the deans of the trial bar in this city.

I am not going to make any excuse for asking for that figure, in view of the size of the estate here and the matter involved.

This Receiver hasn't misrepresented anything to the court. When he came in here at the time of his appointment he knew nothing about the County of Orange job. He took the job. It wasn't a full-time job. He had to spend eight hours a day. Half of it was taken up with preparation of reports, that he could do at home, which he frequently did at home.

He contacted clients in the evening after office hours, so far as appraisals were concerned. That left him with time, [568] not only to supervise the activities of the Receiver, but to consult with Mrs. Hallberg every evening as to the results of the day's work.

I don't think it is necessary to say any more. As I said at the beginning, the court has an adequate complete picture of the testimony given here. The Receiver and his attorney have supervised the properties worth a great deal of money. They have filed a complete report, and I am going to leave it entirely to the court, to your Honor's discretion, as to what you believe to be a reasonable fee for both of those gentlemen.

Thank you.

Mr. Enright: There may be some uncertainty in the record concerning the deposition of Roy E. Hallberg. I understand it to be received in evidence. I was given the opportunity to move to strike

certain portions, if any, I desired to move to strike. I will waive that motion to strike.

Secondly, I am not certain as to whether or not the deposition of Mr. John Whyte is part of the record. I would like to have it received in evidence, as was Mr. Hallberg's.

The Court: So ordered.

Mr. Enright: Thank you, your Honor.

The Court: I suppose we best consider this matter as submitted until after we have completed the sequel. [569]

Mr. Enright: That is my understanding, and I deem it most advisable.

The Court: There has grown up a habit in this court—I am not speaking of this case—but attorneys have taken to writing letters arguing and re-arguing their cases. The Rules say that shouldn't be done.

I will be glad to receive any memoranda filed with the clerk in the ordinary course. There hasn't been any order in this matter. You haven't asked for permission to file.

Do you want any such permission or have I heard enough?

Mr. Enright: I am willing to submit the matter on the points and authorities and memorandums I have submitted.

Mr. Whyte: I am quite willing, also, your Honor.

The Court: All right. This matter is deemed submitted as of this day. [570]

* * * * *

Los Angeles, Monday, June 21, 1954, 2:05 p.m.

The Court: Shall we come on the record?

I suppose the most practical thing is to see if we can arrive at an understanding as to just what the issues are between Mrs. Tidwell and Mr. Richman, and how far those issues can be determined upon the record which has now been made, and in what areas we will need to take further testimony.

What is your view of it?

Mr. Powsner: I think you proposed a certain number of stipulations in your Memorandum, Mr. Enright.

Mr. Enright: Yes. Your Honor, I believe I stated the differences in my Memorandum, that is, the differences between the plaintiff and the defendant.

I further proposed that those differences could be settled upon the present record, although I didn't refer to the present record in my Memorandum, but by the addition of orders already made by the court in this proceeding and a part of the record, plus the escrow instructions executed by both parties, the mutual release executed by both parties, and I would like to add, which I did not refer to in my Memorandum, the Smog Control contract which has been frequently referred to, but I think it is all agreed to so far as the parties are concerned.

That would leave the record in this status: For the [572] court to decide the \$785.00 petty cash fund, the \$1,290.59 rents for the last three days of February, the Oliver Cromwell payment of approx-

imately two thousand dollars, and the services of Mr. Richman for the month of November 1953, the month before the Receiver took over.

Now, I was pleased to observe that upon examining plaintiff's Memorandum that on page 8 of their Memorandum, I think it is line 13, to identify it accurately, concerning the Oliver Cromwell two thousand-dollar payment, plaintiff stated:

"Defendant Richman claims that the Receiver paid the March, 1954, mortgage payment on the Oliver Cromwell trust deed in the sum of \$2,027.25. If that be true that payment should have been made by Plaintiff Tidwell from her own funds and Defendant Richman would be entitled to a credit of one-half that amount."

That is exactly our position on it, so I think that is more or less in a stipulated form, if they desire to——

Mr. Powsner: I think the situation——

Mr. *Richman*: May I finish?

Mr. Powsner: We have that particular check, which is No. 433. In the check, if it so states, that it was for the March 1st payment, I will stipulate it does state that.

As to the conclusion of whether or not it was the March [573] payment, which is considered, according to the agreement, to be an obligation of Mrs. Tidwell, I can't stipulate as to that. There may be other facts or certain information which may arise, frankly, as to that. I don't know what other things might arise.

That is the one item as to which I am uncertain,

but I am unwilling to stipulate completely that Mrs. Tidwell should reimburse the Receiver. I am willing to stipulate that the check has on it the information it has on it, whatever it is.

The Court: And that information truly reflects the purpose of the payment?

Mr. Powsner: Yes, subject to—well, that the information contained thereon is true.

Mr. Enright: I will accept that stipulation.

The Court: You seem to be in agreement with the issues, as Mr. Enright stated them.

Mr. Powsner: I think Mr. Enright has stated correctly the demands he is making upon Mrs. Tidwell. I think he hasn't stated the counterdemand, Mrs. Tidwell's demand against Mr. Richman. I could read the list. There are taxes——

The Court: Well, the purpose in going over all this openly is that it invites an immediate answer to the part that is immediately stated, and thus we can break down the burden that is ahead of us on trial, a little better than [574] by simply taking the attitude that it is all in our respective memoranda.

Mr. Powsner: I understand. In other words, apparently Mr. Enright mentioned four items, which Mr. Enright claims either against Mrs. Tidwell or against the fund.

I agree those four issues are involved, and I think those are the only four demands made by Mr. Richman.

Then there are the demands to be made by Mrs. Tidwell, which create other issues in the case.

There are the real property taxes on the apartment houses, which Mrs. Tidwell paid out of her personal funds for the first six months of 1954. It is her contention that there should be a proration made, so that the first two months' worth of those taxes should be reimbursed to her out of the Receiver's funds. That the first third would be \$4,952.77.

Then, secondly, there are utility bills for a portion of the month of February, which Mrs. Tidwell paid personally, in the amount of \$1,877.50. And again it is our contention that these should have been paid by the Receiver and, therefore, Mrs. Tidwell should be reimbursed out of the funds in the hands of the Receiver for this amount, before any division of that fund is made.

Thirdly, Mrs. Tidwell paid out of her own funds \$2,658.80 for the Oxyaire units. It was our contention that this was an obligation of the trust during the receivership and should [575] have been paid by the Receiver.

Again we contend Mrs. Tidwell should be reimbursed out of the Receiver's funds for this amount.

Fourthly, we claim there was \$4,499.29 collected by the Receiver in February, which amount represented March rents. These went into the fund, and we claim, since they were March rents, Mrs. Tidwell was entitled to them as a whole, and she should be paid those out of the funds before any division is made.

Fifthly, the revenue stamps, in the amount of \$577.50, which were paid by Mrs. Tidwell. We con-

tend these should have been paid personally by Mr. Richman, and we don't feel these should be paid out of the receivership, but paid directly by Mr. Richman out of his personal share after division of the Receiver's funds.

That is five items. I think that is—no, I don't think that completely states our claim. I think there is a claim for \$158.00 as to compensation, or, refund of premium on Workmen's Compensation Policy.

I know Mr. Camusi, in his most recent memorandum, didn't include it. However, he included it in prior memorandum, and I don't want to stipulate he is dropping it.

The Court: Do you want us to understand it is one of the questions before the court?

Mr. Powsner: That is correct. [576]

The Court: What is your view as to evidence to establish these claims? Can I get it from the record, as it has been developed, or will it be necessary to supplement it by the addition of some documents or oral evidence?

Mr. Powsner: What is your position on that, Mr. Enright?

The Court: Mr. Enright has told us he wants us to consider the Oxyaire agreement, the escrow instructions, the release, and I think a check or two.

Mr. Powsner: I think the other evidence and other additions to the record should be considered after we first discuss what agreement we can reach as to the amount paid, and things like that.

For instance, if Mr. Enright will stipulate that

Mrs. Tidwell paid for the taxes, we don't have to introduce evidence she did so, and so on and so forth. And as to the utility bills, also.

The Court: What about that, Mr. Enright?

Mr. Enright: So stipulated. He mentioned the taxes only.

Mr. Powsner: That is right.

The Court: Someone has been ordering transcript of all the proceedings that have been going on. I assume that is a continuing order, or I would have to be taking some notes.

Are you going to have transcript of this? [577]

Mr. Powsner: Yes, we will order transcript.

Mr. Enright: We have ordered transcript.

The Court: I don't know who has. But I slipped into my habit of knowing it has been coming through, relying on a continuance of that.

Mr. Powsner: I think that is reasonable. We will order another transcript. We have discussed the payment on the taxes.

Mr. Enright: May I comment? You left one item out. You are making claim for an escrow fee of \$329.00?

Mr. Powsner: That is right. That was left out of the most recent memorandum, but appears in former memorandum.

Mr. Enright: It is in the most recent, too.

Mr. Powsner: It is in issue, too.

The Court: Are you agreeing that was the escrow fee?

Mr. Enright: I will stipulate they filed an escrow fee of \$329.00, being one-half of the escrow cost.

I will stipulate to that. You did pay it.

Mr. Powsner: I don't know it was one-half of the escrow costs.

Mr. Enright: Then I will stipulate you paid that amount.

Mr. Powsner: Will you stipulate we paid the \$577.50 for Internal Revenue stamps?

Mr. Enright: Yes, so stipulate.

Mr. Powsner: And will you stipulate Mrs. Tidwell paid [578] out of her personal funds charges for utilities for the five apartment houses for portions of February in the amount of \$1,877.50?

Mr. Enright: The amount, I am sure, is less than that amount. And if we can stipulate on all the remaining, for the record, I may be willing to stipulate on that one, also.

The Court: If you are not, it is the sort of matter that is susceptible of such easy proof that you can both probably check your figures.

Mr. Powsner: I think you have five packets of utility bills.

Mr. Enright: I will be willing to submit it on those five packets, if that is your proof.

Mr. Powsner: I haven't looked at the packets.

Mr. Enright: There they are (indicating). Mr. Camusi handed it to me.

Mr. Powsner: That is correct.

Mr. Enright: If that is your proof, I will stipulate they can go into evidence.

Mr. Powsner: I will stipulate they go into evidence. I don't want to stipulate that is the entire case for the utility bills. I understand in those bills

it is shown payment in excess of \$1,877.50, and the excess would represent March payment, but there are \$1,877.50 relating to February utility payments.

However, I find myself in the somewhat awkward position that I haven't examined personally many of the items of debt here. Since I haven't examined those utility bills, we are not willing to rely on those solely for our proof as to this matter.

But I am willing to stipulate they go into evidence for whatever weight they have, and if we feel it necessary that we be allowed to introduce other evidence on that subject.

Mr. Enright: I will stipulate they go into evidence, that is, the memorandum and the bills you have there.

Mr. Powsner: I am speaking of the utility bills.

Mr. Enright: The five utility bills for the five apartment houses.

Mr. Powsner: That is right.

The Court: Does that stipulation include the proposition that Mrs. Tidwell paid those bills out of her personal funds?

Mr. Enright: Yes.

Mr. Powsner: Then there is the payment made by Mrs. Tidwell to the Smog Control people for the Oxyaire unit, \$2,658.80.

Mr. Enright: Well, I am informed the Contract is for a lesser amount. I have seen no evidence for the greater amount.

Mr. Powsner: \$2,658.80.

Mr. Enright: This \$58.80 there (indicating).

Mr. Powsner: You say we are in excess of—

Mr. Enright: Yes.

Mr. Powsner: Can we stipulate it be \$2,600.00, and we can close this matter, I think, quite quickly.

Mr. Enright: That is the amount called for by the Contract.

Mr. Powsner: Well, we will stipulate it is that, and we can argue about the \$58.00. It should be a small argument.

Mr. Enright: O.K. Now, the amount of revenue stamps, I think, is the only remaining one.

Mr. Powsner: I think we stipulated to that.

Mr. Enright: O.K.

Mr. Powsner: No, there are rents for March 1954. We claim that Mr. Hallberg collected in February rents of \$4,499.29, which are March rents.

The Court: Do you have a tabulation of those rents?

Mr. Powsner: I do not have, your Honor, and I haven't seen any in the file so far.

The Court: Is that going to be an issue we will have to take evidence on?

Mr. Powsner: That is what I am going to determine now. They may have definite information to the contrary.

Mr. Enright: Well, I am quite sure we can agree upon the amount of February rents, but before we do——

Mr. Powsner: I think March rents we are referring to.

Mr. Enright: I am quite sure we can agree upon the amount [581] of rent collected in February on account of March rents, but to date we haven't been

able to see the managers' month-end reports for the month of February. As soon as we can spend, say, an hour on those five reports for the five apartment houses, I am sure we can agree or else submit to you——

Mr. Powsner: What you consider to be the correct amount?

Mr. Enright: Yes. It is something that is easy of ascertainment, if you can furnish to us the monthly reports of each of the managers for the month of February, which reflects the rents that were collected in February.

The next question is what portion of that rent was for the month of February and for the month of March.

Mr. Powsner: I will agree to furnish you with these statements. However, I won't agree to be bound by what the books contain. In other words, perhaps, as I said, I have no definite information as to how this sum was reached, and perhaps the books would show a lesser sum. And it would be our position that certain amounts were erroneously termed February rents, but actually March rents, and we would want to prove those by some independent means. I am not sure about that. It would have to be left open.

However, of course, we will submit it to you and perhaps the books will reveal the sum I have mentioned is allocable to March, and you will agree to that. Perhaps it will, I say.

Mr. Enright: Yes. Assuming I did agree, then

we could [582] submit the whole matter to the court.

Mr. Powsner: I think so. Yes, I will stipulate, assuming that you agree the amount is as I have stated.

The Court: You can get together on that agreement at your individual conveniences then.

Mr. Powsner: Yes.

The Court: And bring in a stipulation. It probably will be easier and save your time if we do not have to have a further extension of this pretrial.

Is there any element about which we will have to take oral evidence?

Mr. Enright: None, in my opinion.

The Court: There is the \$58.80.

Mr. Powsner: The possibility is that there will be some oral evidence required on these rents we have just been discussing, the rents collected in February, and claimed as March rents.

The Court: That assumes a lack of success.

Mr. Powsner: That is right.

The Court: If you get together on the \$58.80, and you probably can take your individual files and sit down in conference and you can work out the \$58.80 item and also the rent item.

Assuming you do get together on that, and arrive at a stipulation, do you want to file further memoranda, or have [583] you written enough?

Mr. Enright: I believe I have written enough.

The Court: It seemed to me they were quite full.

Mr. Enright: Your Honor, are you talking about

deferring the filing of further memorandum, in lieu of oral argument?

The Court: Yes. Or do you want to argue orally? Do whatever you like. You know the problem and you know your individual temperaments and how you can best work it out.

Mr. Enright: I would suggest that we be directed to stipulate or not stipulate, say, within a reasonable period of time, five days, or something like that, and then if the court could find time to convenience us for 15 or 20 minutes, that each come in here and orally discuss and argue the exact points involved. We might be able to aid the court in getting to the core of the problem. That would be my thought on it.

The Court: Well, suppose we say that you either arrive at a stipulation or series of stipulations, or abandon the effort prior to the last day of June, and that if you do arrive at a stipulation, that we set the matter for oral argument on July 6th at 9:00 o'clock.

Mr. Powsner: Your Honor, I wonder if it would be at all possible to defer oral argument in this case beyond the month of July. Mr. Camusi has plans to be out of the State during that month. I presume he wants to argue the matter. [584]

The Court: My giving you that date was not simply one of convenience, but I had in mind that I will be out of this division the month of August and will be in vacation during the first part of July, beginning on the 7th.

If you want to put it over beyond the July 6th date, it will have to go into a September date.

Mr. Enright: I would prefer to waive oral argument and submit some kind of a, say, not exceeding four-page explanation to the court before July 6th.

My reason for asking that it be handled in this manner is this: I believe it desirable that the Receiver's fees in this matter all be submitted at the same time.

The Court: I think it is to everyone's advantage to get this tag end of the litigation straightened out, and over.

Mr. Powsner: It isn't my desire to hold up the payment of the Receiver's fee. I don't see that the ascertainment of the reasonableness of his fees or his attorney's fees is dependent on the resolution of the issues between the plaintiff and defendant.

The Court: They rather fall naturally on the same table for consideration. And I would like to have one more bout with Tidwell vs. Richman, and then sign it off.

Mr. Powsner: I understand what you mean.

Mr. Enright: That is my feeling, too, your Honor. It is difficult to work up these matters, analyze them and go in [585] and discuss them, as every time you do there is energy involved. That is why I want to do it all at once.

The Court: Particularly if it is one of these problems that stimulates the recollection of matters that should be considered on others.

See if you can work this out according to the suggestion I have made. If you wish to simply

submit a short informal memoranda on July 6th, I would be happy to accept that in lieu of oral argument, but if you are going to do that, let me know ahead of time so I can know whether to be here at 9:00 o'clock on the 6th.

Mr. Powsner: Mr. Richman and I, or somebody, will get together and come to an agreement as to how the matter is to be conducted, by memorandum or oral argument, on the 6th, and will inform the court of the conclusions we come to.

Mr. Enright: We will meet between now and the 6th and agree to what we can stipulate to and what we cannot.

The Court: Let's have these documents received into evidence now, so the clerk may mark them and I can commence to have them.

Mr. Enright: May I read them off?

The Courtff Yes, read them off and hand the documents to Mr. Whyte.

Mr. Enright: First, a mutual release. This office copy is undated, but it is the form used by the parties, and [586] I think it is agreeable that it be used.

The Clerk: Defendants' A.

The Court: That is admitted.

(The document referred to was marked Defendants' Exhibit A and was received in evidence.)

DEFENDANTS' EXHIBIT A
MUTUAL RELEASE

Lyda Tidwell, individually and as co-trustee and as beneficiary under Richman Trust, hereby releases each of the following named persons or corporations, their agents and servants of any and all claims, known or unknown, that she may have against any one or all of them, from the beginning of the world to the present time, and each one of the following named persons and corporations, and all of them, their agents and servants, individually and jointly, release any and all claims, known or unknown, that they or any one of them have against Lyda Tidwell, from the beginning of the world to the present time, said persons being:

Frederick I. Richman, individually and as co-trustee and as beneficiary and as agent under Richman Trust;

J. B. Witt;

Witt Ice and Gas Co., a California corporation;
Modern Machine Works, a California corporation;

Consolidated Mortgage Co., a California corporation;

Formula Products Co., a California corporation;
Elizabeth Johnson, formerly Elizabeth Pomy.

Dated this.....day of March, 1954.

.....
Lyda Tidwell

.....
Frederick I. Richman

.....
J. B. Witt
Witt Ice and Gas Co., a California
corporation,
By
Modern Machine Works, a California
corporation,
By
Consolidated Mortgage Co., a Califor-
nia corporation,
By
Formula Products Co., a California
corporation,
By
.....
Elizabeth Johnson, formerly
Elizabeth Pomy

The Court: That is for the court to consider as a true copy of the lease that was potentially executed?

Mr. Enright: Yes. The second exhibit, Exhibit B, the mutual dismissal, dated March 25, 1954, which is a part of the court record. May it be received, the original, by reference?

The Court: Yes.

(The document referred to was marked Defendants' Exhibit B and was received in evidence.)

[Printer's Note: Defendants' Exhibit B is a document entitled "Dismissal with Prejudice" and is set out at pages 124-125 of this record.]

Mr. Enright: Exhibit C, a Stipulation between the parties, dated February 26, 1954, which is a part of the court record.

The Court: It will be received by reference.

(The document referred to was marked Defendants' Exhibit C and was received in evidence.)

[Printer's Note: Defendants' Exhibit C is a document entitled "Stipulation" dated Feb. 26, 1954, and is set out at pages 54-55.]

Mr. Enright: Exhibit D, the Order made by the court, pursuant to that stipulation, which order was dated February 26, 1954, and is a part of the court record.

The Court: That is received by reference.

(The document referred to was marked Defendants' Exhibit D and was received in evidence.) [587]

[Printer's Note: Defendants' Exhibit D is a document entitled "Order" dated Feb. 26, 1954, and is set out at pages 55-57 of this record.]

Mr. Enright: Exhibit E, the escrow instructions executed by both parties.

Mr. Powsner: It is a buyer's and seller's escrow.

Mr. Enright: Yes.

The Court: Received.

(The document referred to was marked Defendants' Exhibit E and was received in evidence.)

DEFENDANTS' EXHIBIT E

Michele Geiselman

BUYER & SELLER

(Page One)

ESCROW NO. 100-3456

ESCROW INSTRUCTIONS
BUYER

February 26

1954

CALIFORNIA BANK HEAD OFFICE LOS ANGELES, CALIFORNIA

or to the expiration of the time specified in this paragraph I will hand you
\$100,000.00 (having paid \$100,000.00 to F. I.

CHMAN outside of escrow and with which \$100,000.00
you are not concerned).

will also hand you a Dismissal with Prejudice and
Satisfaction of Judgment in that certain United
States District Court Case No. 13742T, Southern Dis-
trict, Central Division entitled "Tidwell vs.
Chman.

will also hand you any instruments and/or documents necessary and/or required of me to termin-
ate that certain Declaration of Trust known as "Richman Trust" dated November 1, 1945 and will
do so with my co-trustee, F. I. Richman in the execution of any instruments and/or documents
necessary to complete this escrow. I WILL ALSO HAND YOU

any additional funds and documents, including notes secured by encumbrances I create, required from me to enable you to comply with these instru-
ments, all of which you are authorized to use and/or deliver provided on or before ~~May 1, 1954~~ May 1, 1954 instruments

have been filed for record entitling you to procure Title Insurance and Trust Company's Standard Owner's or Joint Protection
policy of title insurance in the issuing Title Company's usual form with its liability for \$100,000.00 ~~XXXXXXXXXXXXXXXXXXXX~~

on real property in the COUNTY OF LOS ANGELES, STATE OF CALIFORNIA. Viz as per attached rider

MEMO	
Paid outside of Escrow \$	100,000.00
Cash through Escrow	500,000.00
Unpaid Balance of Encumbrances of Record	
New Encumbrances	600,000.00
Total Consideration	

PARCEL 1: The easterly 149.75 feet of the northerly 60 feet
of Lot 1 in Block 2 of Beaudry Tract, in the city of Los Angeles,
county of Los Angeles, state of California, as per map recorded in
Book 1 Pages 401 and 402 of Miscellaneous Records, in the office
of the county recorder of said county.

PARCEL 2: Lot 17 of Culver's Hollywood Park Tract, in the city of
Los Angeles, county of Los Angeles, state of California, as per
map recorded in Book 4 Page 33 of Maps, in the office of the
county recorder of said county.

PARCEL 2a: Lot 1 of the Holly Tract, in the city of Los Angeles,
county of Los Angeles, state of California, as per map recorded
in Book 3 Page 29 of Maps, in the office of the county recorder
of said county.

PARCEL 3: The north 21 feet of lot 8, and all of lots 9 and 10 and
the south 17 1/2 feet of lot 11 in block 14 of Chapman Park Tract,
in the city of Los Angeles, county of Los Angeles, state of
California, as per map recorded in book 8 page 54 of Maps, in the
office of the county recorder of said county.

PARCEL 4: Lots 22 and 23 of Country Club Heights, in the city of
Los Angeles, county of Los Angeles, state of California, as per map
recorded in book 6 page 56 of Maps, in the office of the county
recorder of said county.

PARCEL 5: Lot 7 and the northerly 50 feet of lot 6 in block 1
of Hollywood Ocean View Tract, in the city of Los Angeles, county
of Los Angeles, state of California, as per map recorded in book 1
page 62 of Maps, in the office of the county recorder of said county.

EXCEPTING therefrom the northerly 15 feet of said lot 7, as conveyed
to the County of Los Angeles for road purposes by deed recorded in
book 1634 page 246 of Deeds.

Defendants' Exhibit E (Continued)

map recorded in Book _____ Page _____ of _____ records of said county,
 VESTED IN: LYDA RICHMAN TIDWELL, a married woman as her sole and separate property

OF ENCUMBRANCES EXCEPT:

and Installment General and Special Taxes for the fiscal year 1953, 1954, including PERSONAL PROPERTY TAXES
 of any former owner and ALSO INCLUDING ANY SPECIAL DISTRICT LEVIES, PAYMENT OF WHICH ARE INCLUDED THEREIN AND
 NOTED THEREWITH:

and assessments levied or assessed subsequent to date of these instructions:

tions, restrictions, reservations, covenants, easements, rights and rights of way, of record, if any:

and Chattel Mortgage
 Deed securing an indebtedness of \$ 265,000.00, as per its terms, now of record the terms of which indebtedness and said trust
 I am familiar, and hereby approve, no further approval necessary (see page two for amount of unpaid balance of principal). affecting
all 3 and any Trust Deed which I have executed individually in favor of California Bank
covering any and/or all of the above described
property.

I hold for me Bill of Sale executed by F. I. Richman and Lyda Tidwell, formerly known as
a Magel, Trustees under Declaration of Trust known as "Richman Trust, dated November 1, 1945
Lyda Richman Tidwell, a married woman as her sole and separate property and covering all
contents and furnishings of the apartment buildings located on the above described properties.
signature thereon as one of the trustees constitutes my approval as Vendee of said Bill of
Sale.

I hold for me an instrument or instruments of transfer to me covering all other and remain-
ing assets of said Trust, the same to be approved by my attorney, Laurence B. Martin.
I will also hand to you for delivery to F. I. Richman at close of escrow a full and complete and
final release in favor of F. I. Richman and all other parties named as Defendants in the above
captioned United States District Court Action when you can hold for me a full and complete release
in favor of said Defendants. The form of these mutual releases is to be approved
by my attorney Laurence B. Martin and by Joseph T. Enright, attorney for F. I. Richman.
Notwithstanding the printed provision in these instructions I agree to pay, in addition to the
seller's costs and expenses in this escrow all of the seller's costs and expenses of this escrow:
the cost of the policy of title insurance, revenue stamps and recording and filing all
instruments and documents and the seller's escrow fee.

These instructions are not intended to and do not amend, alter, modify or supersede any
agreement outside of escrow between F. I. Richman and me and with which agreement California
is not to be concerned.

I will hand you a Quitclaim Deed from my husband Albert Ray Tidwell covering the above described
property creating sole and separate property in me.

POLICY OF TITLE INSURANCE CALLED FOR UNDER THESE INSTRUCTIONS MAY BE ISSUED FOR THE BENEFIT OF ALL PARTIES IN
INTEREST AND MAY BE PROCURED FROM ANY TITLE COMPANY OPERATING IN THE COUNTY WHERE THE PROPERTY IS LOCATED AND
IT SHALL BE SUBJECT TO EXCEPTIONS AND CONDITIONS CONTAINED IN SUCH COMPANY'S REGULAR PRINTED FORM, INCLUDING BUT NOT
LIMITED TO AN EXCEPTION THAT SAID POLICY WILL NOT INSURE AGAINST LOSS BY REASON OF THE RESERVATION OR EXCEPTION OF
WATER RIGHTS, CLAIMS, OR TITLE TO WATER.



THE FOLLOWING ADJUSTMENTS ONLY ARE REQUIRED IN THIS ESCROW:

any above mentioned Trust Deed is to be adjusted on the basis of the statement by the owner of the note secured thereby or the holder for collection showing balance of principal thereof to be \$None, and adjust interest thereon on basis of such statements to None
 SAID BALANCE OF PRINCIPAL THEREON SHOULD SHOW TO BE MORE OR LESS THAN SET OUT ABOVE ADJUST THE DIFFERENCE
 ACCORDINGLY IN CASH THROUGH THIS ESCROW.

Charge the buyer and credit the seller the amount of any funds shown on beneficiary's statement as impounded for future payment of fire insurance premiums, taxes on mortgage insurance premiums, and prorate mortgage insurance premiums paid F.H.A. during the past 12 months, based on said statement to None

Just interest on new encumbrances by endorsements on notes to None

Prorate taxes, including all items appearing on tax bill except taxes on personal property not conveyed through this escrow, to None

based on None tax statement in your possession.

Prorate rentals on basis of statement approved by me, to None, but make no adjustment on uncollected rentals

except for me such insurance policies as are submitted on buildings situated either on property above described or on premises known as none (transferred free)

or may assume that premiums on said policies have been paid and that the policies have not been hypothecated

Make all adjustments and/or proratings on the basis of a 30 day month. "Close of Escrow" is the day instruments are recorded or registered

I agree to pay on demand all prorate adjustments chargeable to me; charges for recording deed; for notary fees on documents executed by me, or mortgage clause or insurance; for drawing mortgage and/or trust deed; cost of drawing and recording any other documents necessary on my part to complete this escrow; Title Company's charge, if any, for showing title vested in me, and Buyer's escrow fee as charged.

Seller agrees to pay, outside of escrow, and before delinquency, all taxes on personal and/or real property not conveyed through this escrow, which appear a lien on above described property, and you are not to be concerned therewith.

The seller guarantees that the premium on any insurance policy which he hands you or causes to be handed you in this escrow has been paid in full and that said policy has not been hypothecated.

Deliver assurance of title and insurance policies, if any, to holder of first encumbrance, or order, if any. Make disbursements by your check, documents and checks in my favor to be mailed to my address shown below unless you are otherwise instructed.

If the conditions of this escrow have not been complied with at the time herein provided, you are nevertheless to complete the same as soon as the conditions (except as to time) have been complied with, unless I shall have made written demand upon you for the return of money and/or instruments deposited by me.

NO NOTICE, DEMAND OR CHANGE OF INSTRUCTIONS SHALL BE OF ANY EFFECT IN THIS ESCROW UNLESS GIVEN IN WRITING TO ALL PARTIES AFFECTED THEREBY. In the event conflicting demands are made or notices served upon you with respect to this escrow, the parties hereto expressly agree that you shall have the absolute right at your election to do either or both of the following: withhold and stop all further proceedings in, and performance of, this escrow, or file a suit in interpleader and obtain an order from the court requiring the parties to interplead and file in such court their several claims and rights amongst themselves. In the event such interpleader suit is brought, you shall ipso facto be fully released and discharged from all obligations to further perform any and all duties or obligations imposed upon you in this escrow, and the parties jointly and severally agree to pay you all costs, expenses, and reasonable attorney's fees expended or incurred by you, the amount thereof to be fixed and a judgment agreed to be rendered by the court in such suit.

You are not to be held liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to identity, authority, or rights of any person executing the same, nor for failure to comply with any of the provisions of any agreement, trust, or other instrument filed herein or referred to herein, and your duties hereunder shall be limited to the safekeeping of such money, instruments, or other documents received by you as escrow holder, and for the disposition of same in accordance with the written instructions accepted by you in this escrow.

All parties hereto further agree, jointly and severally, to pay on demand, as well as to indemnify and hold you harmless from and against all its damages, judgments, attorney's fees, expenses, obligations and liabilities of any kind or nature which, in good faith, you may incur or sustain in connection with or arising out of this escrow, and you are hereby given a lien upon all the rights, titles and interest of each of the undersigned in all moneys, papers and other property and monies deposited in this escrow, to protect your rights and to indemnify and reimburse you under this agreement.

It is agreed by the parties hereto that so far as your rights and liabilities are concerned, this transaction is an escrow and not any other relation and you are an escrow holder only on the terms expressed herein, and you shall have no responsibility of notifying me or any of the parties to this escrow of any sale, lease, loan, exchange, or other transaction involving any property herein described or of any profit realized by any person, in or corporation (broker, agent, and parties to this and/or any other escrow included) in connection therewith, regardless of the fact that such transaction(s) may be handled by you in this escrow or in another escrow.

These instructions may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument.

Any amended, supplemental, or additional instructions given shall be subject to the foregoing conditions.

THE FOREGOING TERMS, CONDITIONS, PROVISIONS AND INSTRUCTIONS HAVE BEEN READ AND ARE UNDERSTOOD AND AGREED TO BY EACH OF THE UNDERSIGNED.

Signature Lyda Richman Tidwell Address c/o Laurence B. Martin Phone VA 1411
Martin, Mahn & Camusi Zone
 Signature _____ Address 530 W. 6th St. Suite 701, IA 14 Phone _____
 Zone

SELLER

February 26, 1954 19

THE FOREGOING TERMS, CONDITIONS AND/OR INSTRUCTIONS ARE HEREBY CONCURRED IN, APPROVED AND ACCEPTED.

Prior to the expiration of the time specified on Page One of the Buyer's Instructions I will hand you all instruments and money necessary of to enable you to comply therewith, including a deed of the property described, executed by F. I. RICHMAN and LYDA TIDWELL,

formerly known as Lyda Nagel, Trustees under Declaration of Trust known as "Richman Trust," dated November 1, 1945

which you are authorized to use and/or deliver when you hold in this escrow for the account of F. I. Richman

sum of 500,000.00 net _____ and instruments deliverable to me under these instructions. _____

My commission of \$ None to _____

Broker's License No. _____, whose address is _____

Notwithstanding any of the printed provisions herein I, the undersigned, F. I. Richman

do not to be at any expense under this escrow.

I understand that the dismissal with prejudice and the Satisfaction of Judgement will be required to be filed in the United States District Court action referred to in the Buyer's

instructions and the filing thereof shall constitute the delivery thereof to me.

the close of escrow deliver to me the General Release signed by Lyda Tidwell in my favor

in favor of all defendants in said United States District Court Action.

You will, as my agent, assign any insurance of mine handed you for use in this escrow _____

U.S. District Court, the proper amount to be affixed to said deed

Issue your check for \$500.00 in favor of F. I. Richman

I mail to: F. I. Richman Address appearing below



(b) Install electric locks to each hopper on every floor.

(c) Complete gas line to each dehydrating burner in existing incinerator, as well as gas line to new unit.

(d) File applications covering Los Angeles County Air Pollution Control District permits.

(e) Equipment will be guaranteed as follows:

1. For a period of two (2) years from date of approval, against faulty material or workmanship.

2. To give complete operating satisfaction.

3. To conform to Los Angeles County Air Pollution Control District requirements for the next five (5) years—when operated according to our written instructions.

All materials used in construction described above will be new and of first quality. All labor will be performed by men experienced in incinerator construction.

Price quoted does not include labor and materials in the nature of maintenance or repairs to existing incinerator and stack.

A deposit of 10% of the above quoted amount is required upon execution of contract, balance of which is payable upon receipt of the Los Angeles County Air Pollution Control District permit to operate.

Our work is approved by the F.H.A., and very liberal loans are available for this work.

Thanking you for the opportunity to submit this quotation, we are

Very truly yours,

Air Pollution Control, Inc.

HBP/db

Hal B. Phillips

I hereby accept the offer of the Air Pollution Control, Inc. as outlined on pages one and two of this quotation and agree to pay the sum of \$1,-450.00 and upon execution of this contract we are submitting a deposit of \$150.00.

Date: 10-23-53.

/s/ Richman Trust

/s/ By F. I. Richman, Owner Agent

Accepted by: Date 10-26-53.

Air Pollution Control, Inc.

/s/ By B. Manalis, V.P.

[Duplicate copy attached.]

Mr. Enright: The next, either by stipulation or by reference to the present court record, is the Oliver Cromwell Smog Control permit, pertaining to the Oxyaire Company. The permit was issued on March 9, 1954.

Mr. Powsner: Is that permit in the record?

Mr. Enright: The physical document is not, but it should be a part of your files. [588]

Mr. Powsner: Of the court files?

Mr. Enright: No, of yours. I mean your client's

files, the plaintiff's files. It was received through the mail.

Mr. Powsner: I will stipulate that that permit go in evidence. I don't know what it says.

Mr. Enright: Will you locate it?

Mr. Powsner: Yes.

Mr. Enright: And the permit——

Mr. Powsner: Dated March 9th?

Mr. Enright: Yes. Likewise, there was a permit for the Canterbury, which I think is involved in your amounts here, and it was issued March 23rd. Will you locate that?

Mr. Powsner: Yes.

Mr. Enright: And the same stipulation as to its going into evidence?

Mr. Powsner: Yes. We will stipulate those are the dates. You have a right to put the document in evidence, if you wish.

Mr. Enright: Stipulate they go into evidence.

Mr. Powsner: I haven't seen them. I don't know what the dates on them are.

Mr. Enright: That is all right.

(The documents referred to were marked Defendants' Exhibit G and were received in evidence.)

AIR POLLUTION CONTROL DISTRICT
COUNTY OF LOS ANGELES

PERMIT

IS HEREBY GRANTED TO

OLIVER CROMWELL APARTMENT HOTEL - RICHMAN TRUST, DBA

TO OPERATE

CHUTE-FED INCINERATOR, MODIFIED WITH A OXYAIRE U-UNIT WITH AFTERBURNER

LOCATED AT

418 South Normandie Avenue
Los Angeles 5, California

SUBJECT TO THE FOLLOWING CONDITIONS

N O N E

THIS PERMIT DOES NOT AUTHORIZE THE EMISSION OF AIR CONTAMINANTS IN EXCESS OF THOSE ALLOWED BY DIVISION 20, CHAPTER 2, ARTICLE 3, OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA OR THE RULES AND REGULATIONS OF THE AIR POLLUTION CONTROL DISTRICT.

THIS PERMIT CANNOT BE CONSIDERED AS PERMISSION TO VIOLATE EXISTING LAWS, ORDINANCES, REGULATIONS OR STATUTES OF OTHER GOVERNMENTAL AGENCIES.

DATE March 9, 1954
Appl. No. 8219

REVOCABLE AND NOT TRANSFERABLE

GORDON P. LARSON, DIRECTOR

POST NEAR OPERATING EQUIPMENT

By [Signature]
Business Manager

76P236 10-53

N^o 10424

AIR POLLUTION CONTROL DISTRICT
COUNTY OF LOS ANGELES

PERMIT

IS HEREBY GRANTED TO

CANTERBURY APARTMENTS

(JAMES M. UDALL, INCORPORATED, DBA)

TO OPERATE

FIVE FED INCINERATOR WITH TWO METTLER #4 RS GAS BURNERS
AND AN OXYAIRE U-UNIT WITH A METTLER #9 RS GAS BURNER

LOCATED AT

1746 North Cherokee Avenue
Los Angeles 28, California

SUBJECT TO THE FOLLOWING CONDITIONS

N O N E

THIS PERMIT DOES NOT AUTHORIZE THE EMISSION OF AIR CONTAMINANTS IN EXCESS OF THOSE ALLOWED BY DIVISION 20, CHAPTER 2, ARTICLE 3, OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA OR THE RULES AND REGULATIONS OF THE AIR POLLUTION CONTROL DISTRICT.

THIS PERMIT CANNOT BE CONSIDERED AS PERMISSION TO VIOLATE EXISTING LAWS, ORDINANCES, REGULATIONS OR STATUTES OF OTHER GOVERNMENTAL AGENCIES.

DATE June 2, 1954
Appl. No. 9430

REVOCABLE AND NOT TRANSFERABLE

GORDON P. LARSON, DIRECTOR

POST NEAR OPERATING EQUIPMENT

By [Signature]
Business Manager

76P236 1-53

N^o 1343

DEFENDANT'S EXHIBIT G

DEPT
EX G







Mr. Enright: That would be the defendants' case, your [589] Honor.

The Court: What do you wish to put in?

Mr. Powsner: I think Mr. Enright has pretty well covered the exhibits. The letters of February 19th and 26th, constituting a contract, are part of this record, are they not?

Mr. Enright: I would propose they be more definitely made a part of the record, as an exhibit by reference, to the objections by the defendant to the Receiver's accounting. That is where they are in the record.

The Court: So ordered.

Mr. Enright: That would be Exhibit H. That would be the two letters, one dated February 19, 1954, and the other dated February 25, 1954.

Mr. Powsner: Those are the letters made exhibits in your first objections?

Mr. Enright: My objections, defendants' objections.

(The documents referred to were marked Defendants' Exhibit H and were received in evidence.)

[Printer's Note: Defendants' Exhibit H, two letters, one dated Feb. 19, 1954, and the other Feb. 25, 1954, attached to Defendants' Objections, set out at pages 139-144 of this record.]

Mr. Powsner: I have nothing more to offer in evidence at this time.

The Court: Then that concludes our regular pre-trial for today, and we will anticipate either memoranda or argument on July 6th.

Mr. Powsner: Your Honor, I think there may

be some more stipulations which could possibly be reached here and now. [590]

The Court: All right.

Mr. Powsner: The amounts in connection with Mr. Richman's claims. We could stipulate that petty cash fund was \$785.00.

Mr. Enright: I had assumed that had been stipulated to.

The Court: The parties both have treated it as that amount.

Mr. Powsner: I don't know the state of your knowledge concerning the rents which you claim were collected by Mr. Hallberg, which were February rents and which were turned over to Mrs. Tidwell's agents.

I have information from Mr. Udall setting out the precise amounts which are February rents, on which Mr. Richman should have correct information, and that those amounts, or, the total is not \$1,290.59, but \$1,300.28, and that is divided up as follows:—

Mr. Enright: We will not accept the greater amount.

Mr. Powsner: That greater amount, I am starting to point out to you of what it is made up.

Mr. Enright: I would stand on the \$1,290.59. I know how you got your \$1,300.28. It is a prorate basis, and we do not agree to a proration. It is all stated in Mr. Camusi's letter of March 30th.

Mr. Powsner: In connection with the Canterbury and Western Arms and Cromwell, those three.

Mr. Enright: Yes.

Mr. Powsner: In other words, we are at issue on those amounts?

Mr. Enright: I will agree you could offer evidence it was \$1,300.28, if you so desire. We say the amount is \$1,290.59.

Mr. Powsner: There is some confusion as to what we are talking about here. When I mentioned \$1,300.28 I referred to a total which, it is our position, you have mistakenly assumed is entirely February rents. It is our position that only \$424.34 of that amount is February rents.

Mr. Enright: I cannot so stipulate.

Mr. Powsner: Then we could stipulate that the agent's fees for November, of \$3,104.13, have not been paid?

Mr. Enright: I will accept that stipulation.

Mr. Powsner: That is all I can propose, your Honor.

The Court: Well, it seems that you still have some fact issues, as to which evidence will be necessary, unless you get together on stipulations which don't look too hopeful. Perhaps by July 6th you will have worked out your stipulation. If you have not worked out further stipulation the court will give you a date for taking the evidence.

Mr. Enright: Your Honor, before we do become involved in what could be a trial lasting, I would say, maybe two days, there is a point of law that the court could rule upon, which [592] would eliminate the necessity of receiving evidence on proration of rents, or one point we have a question of fact on.

The \$58.80 item on the smog equipment I would forfeit rather than go to trial on, leaving only this question of rents.

Now, the point of law I make is this: There has been received in evidence by stipulation already two escrow instructions. They have been received in evidence, the February 19th offer from the defendant to the plaintiff, and February 25, 1954 acceptance by the plaintiff of the defendant's offer.

The Court: And the release.

Mr. Enright: And the release. Now, my point is this: That the escrow instructions specifically provide there be no proration of rents if the court were to rule upon that written instrument, three documents constituting the instrument, or, if they want, the two letters, the offer and acceptance. The parol evidence is not admissible, I don't think. I am satisfied it isn't.

At least in my own mind there is no issue of fact remaining, because the escrow instructions are clear that there be no proration of rents.

I have it here, if you care to read it. And I had in mind the specific provision on page 2 of the instructions, "The Following Adjustments Only Are Required In This Escrow:" [593]

When it comes to rents there is "None."

The typewritten portion of the escrow specifically provides, on the first page:

"Notwithstanding the printed provision in these instructions I agree to pay, in addition to the buyer's costs and expenses in this escrow all of the seller's costs and expenses of this escrow and the

cost of the policy of title insurance, revenue stamps and recording and filing all instruments and documents and the seller's escrow fee.

“These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me and with which agreement the California Bank is not to be concerned.”

My point is this, your Honor: The February 19, 1954 letter, offer, provided for an escrow, contemplated an escrow.

The February 25, 1954 acceptance accepted the offer as it was written. Somehow we might logically argue there is uncertainty as to the meaning of the offer and acceptance.

But if there is uncertainty, that uncertainty was completely cured and perfected by the written escrow instructions that I have just read, or the whole of the written instructions, if one wants to add all of them. [594]

Now then, if the plaintiff here expressly in writing agreed that there be no proration of rents, and rents were to remain in the hands of the Receiver up to 5:00 p.m. February 28th, and the plaintiff was to receive the rents commencing March 1st, the escrow instructions specifically provide for no proration of any kind. The escrow instructions specifically provide——

Mr. Powsner: I don't think the escrow instructions say that.

Mr. Enright: The escrow instructions specifically

provide, "The Following Adjustments Only Are Required In This Escrow:"

It then goes on and enumerates taxes and various other items, and after each and every one the word is printed in as follows: "None," N-o-n-e.

My point is this: That it is a question of law for the court to determine from the instruments themselves as to whether there is any proration of rents.

If the court determines in the defendant's favor, then there is no occasion to stipulate. I am merely stating here, to avoid the necessity of going to trial on fact which I will object to, or evidence pertaining to fact, which I will object to, as being an attempt to vary the terms of the written agreement.

The Court: The court sustains your objection. I think [595] parol evidence takes care of it, the parol evidence rule, I mean.

Mr. Enright: Yes.

Mr. Powsner: May I say, in connection with Mr. Enright's objection to the introduction of evidence, I think there is no question of parol evidence being introduced to modify the original escrow instructions. The escrow instructions specifically say, "These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me," Mrs. Tidwell.

Obviously, that provision does refer to agreements, the outgrowth of escrow, and would refer to them and bring them most definitely into the interpretation of this agreement.

I think the authorities in Mr. Camusi's latest

brief most accurately show that escrow instructions are, in their interpretation, subordinated to a written contract by which they are arrived at.

The Court: Are you contending there was a written contract which provided for proration?

Mr. Powsner: That is correct.

The Court: I will set aside the ruling and examine the evidence and see if it includes such a contract.

Mr. Enright: Yes. In other words, the court will examine the two letters and then examine the escrow instructions and then rule—— [596]

The Court: Yes.

Mr. Powsner: Subject, your Honor, of course, to the arguments as to the meaning of that contract?

The Court: Yes. That will be one of the subjects that is to be argued here on the 6th.

Mr. Powsner: Yes. As I understand, your Honor is not going to make the requested ruling at this point now, but just to answer Mr. Enright, the point is that the instructions do refer to the prior contract and says it is not intended to supersede them, and the authorities submitted point out, not only does not the escrow instructions supersede the contract, but it is definitely subordinate in its meaning and interpretation to the former contract.

The Court: Yes.

Mr. Powsner: Which former contract, at least the affected provisions of it, having been written by Mr. Richman or his attorney, are to be construed, if there is any ambiguity in there, are to

be construed most strongly against Mr. Richman.

I want to answer Mr. Enright, to point out that the authorities show—and I don't think Mr. Enright has submitted any authorities to counter against this—it is our contention the authorities do show that the contract contained in the letters of February 19th and February 25th prevail over contradictory provisions in these escrow instructions.

And in construing that contract, to see if it does have [597] provisions to prevail over the provisions of the escrow instructions, that that contract must be construed most strongly against Mr. Richman.

Mr. Enright: Are you through?

Mr. Powsner: Yes.

Mr. Enright: My point was that I invited a ruling by the court interpreting and construing the two letters and the escrow instructions, or without the escrow instructions, and if the ruling were favorable to the defendant there would be no occasion for our issue of fact.

I am willing to stand on the very authority they particularly—and I quote from their own memorandum:

“In *Pigg vs. Kelley*, 92 Cal. App. 329, it was held that where a written agreement of sale and escrow instructions connected therewith show by their terms that they refer to the same sale, the two instruments must be construed together under Civil Code 1642 to ascertain the whole contract between the parties.”

And they also cite *Womble vs. Wilbur*, 3 Cal. App. 527.

I am attempting to avoid an issue of fact. I will endeavor to stipulate and will meet at counsel's convenience any time between now and July 1st.

Mr. Powsner: Yes, we have stipulated to that.

Mr. Enright: Any other evidence? [598]

Mr. Powsner: No other evidence that I have. Am I to understand you are abandoning your request for a ruling at the present time?

Mr. Enright: No. I am still requesting it. I understand the court——

The Court: I understand he is still requesting it. I don't want to rule precipitously, until I have an opportunity to reflect on it.

Mr. Powsner: May I request then it be made along with the other issues in the case, after briefs or memorandum are submitted by us, or oral argument or introduction of evidence, depending on what agreement we reach?

The Court: It would have to be made before the case is closed. It might be a ruling which would allow the introduction of evidence. It might be a ruling which would foreclose some evidence you would wish to offer. I will have to make it before the case is concluded.

Mr. Powsner: Your Honor is now referring to a ruling as to the legal effect of the escrow instructions and the written contract?

The Court: That is right.

Mr. Powsner: It is my understanding that we have stipulated to everything except minor amounts of money in connection therewith.

The Court: But you haven't stipulated as to the legal [599] effect of the instruments themselves.

Mr. Powsner: That is right. I would want to include those issues in any further arguments, memoranda or brief to be made.

The Court: You may do so. And that is what we will rule on before the case is closed. I will hear you on July 6th at 9:00 o'clock or receive your briefs on those points, and we will have given this matter some study, so that I can possibly let you know immediately.

Mr. Enright: May I comment that if the court does find a few moments' time—and I know time is pressing—then we might avoid our question of fact as to this \$4,499.29 February rents they claim they collected.

The Court: Yes.

Mr. Powsner: I don't mean to be insistent. I don't want to misunderstand. In other words, your Honor is not going to make that legal ruling before giving us a chance for further argument on that legal point?

The Court: Not at all. Not at all. It is going to be argued before it is decided.

Mr. Powsner: One other confusion I have. Assuming we cannot get together and completely dispose of the case by stipulation, plus written memorandum, and assuming that I understand that the situation that will take place July 6th will simply be the assigning of a further date for hearing, [600] of some date in the future after July 6th for hearing——

The Court: On July 6th we will hear argument on this particular question.

Mr. Powsner: I see.

Mr. Enright: I don't know what you want to do about this envelope. I believe if they could be kept back, I am quite sure I can demonstrate to you——

The Court: You think it is a matter that can be disposed of by stipulation?

Mr. Powsner: I think we ought to have these while we discuss the matter.

The Court: Yes.

Mr. Enright: This transcript will be written up and we will have the benefit of it for further hearing.

The Court: That is my understanding.

Mr. Powsner: Yes, I am requesting that it be written up at the present time.

Mr. Enright: I can't propose anything else, your Honor, to close this matter.

The Court: Well, I wish you luck in your discussions.

Mr. Enright: Thank you.

Mr. Powsner: Thank you.

(Whereupon, at 2:55 o'clock p.m., Monday, June 21, 1954, the hearing in the above-entitled matter was adjourned.) * * * * * [601]

Los Angeles, Monday, Sept. 27, 1954, 9:00 a.m.

The Court: It has been a long time since we were all here in this case, but, as I recall it, this is the day for the final, final argument on the sub-

ject of settlement of the trustee's account or, rather, the Receiver's account. Is that right?

Mr. Camusi: Yes, that is right.

Mr. Enright: As I understand the matter, your Honor.

The Court: Who wants to make the first argument or be first in the making of the final argument?

Mr. Enright: I will be glad to be heard, your Honor.

The Court: All right.

Mr. Whyte: Might I request the court's indulgence before we begin?

I believe this session today has to do with the adjustment of the accounts between Mrs. Tidwell and Mr. Richman. The argument with respect to the Receiver's report and the fees have already been argued.

Might I inquire of the court what I should do about these bills again?

There is a bill in the sum of \$89.20 to the reporter on account of copies of the Receiver's deposition and of my deposition taken by Mr. Richman.

There is also a bill in the sum of \$100.00 as the fee [603] for the expert witness, who testified as to the reasonable value of Mr. Hallberg's services.

Would the court care to instruct as to what disposition should be made of those bills?

The Court: Yes. The court should instruct you, but not from the bench.

Mr. Whyte: Would you prefer that I file a written petition for instructions?

The Court: You might just file the bills with the Clerk here, and he can give them exhibit numbers.

Mr. Whyte: Would either counsel like to see these?

Mr. Enright: Yes. Not at this time.

The Court: My offhand feeling is that the receiver has finished paying bills, as such, and that these are more in the nature of costs, but I want the answer, and I won't know until the books are made available.

Mr. Whyte: Very well, your Honor.

The Court: I am somewhat surprised to see you here, since the argument has been made upon your fees and those of your client, and I don't think it is necessary for you to remain. I assume you are going to ask permission——

Mr. Whyte: Yes, I was going to ask if I might be excused, unless the court would request me to remain.

The Court: You are very welcome, but since all matters concerning your petition and those of your client have been [604] argued, insofar as they refer to those parties, your further attendance is not required.

Mr. Whyte: That is just fine, your Honor. Thank you.

(Whereupon Mr. Whyte retired from the courtroom.)

Mr. Enright: May it please the court: On the June 21st hearing in this matter, stipulations were entered into, and Exhibits A to H, inclusive, were received in evidence, and after they were received

in evidence, on behalf of the defendant, Mr. Richman, I objected to the introduction of certain evidence on the part of the plaintiff pertaining to the proration and pertaining, for example, to the escrow expenses or the Revenue stamps.

My objection was stated in the transcript, as shown for that day, and on page 25, after the court had sustained my objection, the plaintiff's counsel argued that they had further argument or evidence to support their position that there be a proration, and at line 18 the court stated:

“The Court: Are you contending there was a written contract which provided for proration?”

“Mr. Powsner: That is correct.”

Now, with those simple preliminaries I am sure we are back to the basic proposition as to whether or not the February 19th offer of settlement and the February 25th acceptance, being Exhibit H before your Honor, constituted a contract. [605]

I am sure there was no dispute in anyone's mind that that did constitute a settlement agreement.

Now, the next question is whether or not that contract, composed of the two letters, provided for proration of taxes, rents, payment of escrow expenses, the revenue stamps to be put on the seller's, Mr. Richman's deed, and it is our position and stand that the statement is clear and does not provide for those payments.

Now, assuming that the agreement is ambiguous, two days later the parties met at Escrow Services of the California Bank, and they entered into a written escrow agreement. The terms and provi-

sions of that agreement eliminate any possibility of dispute.

Now, we both submitted our memorandum or our arguments, and the plaintiff herself cited two or three cases which showed definitely that the written agreement and the escrow instructions were to be read together. The escrow instructions clarify it, if there was any uncertainty in the written agreement.

Now, since then, and over this week end, I ran across a very recent District Court of Appeals decision, a California District Court of Appeals decision. It is *Leiter vs. Handelsman*, decided May 7, 1954, reported at 270 Pac. 2d. 563. It involved a written agreement for the sale of a lot on which the parties contemplated constructing a super-market, or [606] a market of substantial value, I think of some \$30,000 and it also involved escrow instructions. Now, on appeal this is what the Appellate Court said, quoting on page 567:

"There are two instruments involved here, the agreement of purchase, and the escrow instructions. Where the terms of an executory agreement for the sale of real property are clarified by the provisions of signed escrow instructions, those instruments are to be considered together in determining the understanding of the parties and in ascertaining their rights and obligations."

Katemis vs. Westerlind, a citation, and *Keelan vs. Belmont Co.*, another citation.

Continuing the quote:

"Escrow instructions are customary and expected

directions to carry into effect an executory agreement. *King vs. Stanley*, *supra*.

“The agreement of purchase provided that ‘Time is of the essence of this contract, but the time for any act required to be done may be extended not longer than thirty days by the undersigned agent’. The escrow instructions contained the following: ‘In the event that the conditions of this escrow have not been complied with at the expiration of the time provided for herein, [607] you are instructed to complete the same at the earliest date possible thereafter, unless we or either of us shall have made written demand upon you for the return of the money or instruments deposited by either of us; in which case you are instructed to return all instruments and/or cash to the respective parties hereto. * * *’”

I ask that we not confuse the facts that are in issue, that time is the essence, as the issue here is the payment of the proration of taxes, proration of rents, payment of escrow expenses, because the same principle of law applies to both sets of fact.

Again, I point out that the court said the rule of law is that you read the agreement and the escrow instructions together if the agreement needs clarification, and this is what the Appellate Court has said at page 567, in determining this point:

“Assuming, nevertheless, but not necessarily deciding, that Katemis is controlling and that time was not of the essence here, we come next to the escrow instructions.”

That is our exact position here in this case. Assuming that the written agreement was not clear in providing that there were to be no proration of these items, we next come to the escrow instructions, just as this trial court did, [608] and this Appellate Court did.

Then the Appellate Court said, in deciding that proposition, and I quote again from page 567, and after referring to the facts here, I quote:

“The right to make written demand for return of the money or instruments was an integral clear and unequivocal clause in the instructions. Even if time was not of the essence, and even if it could be found that there had been a waiver of the precise time of performance, nowhere has it been suggested in the evidence or in argument that respondents waived their right to make written demand for return of their money after the 30-day escrow period concluded. Were they to be denied that right, the court in effect would be altering the express terms of the contract. Neither a trial nor appellate court has the power to rewrite a contract.”

Now, let us examine what these parties agreed to in their escrow instructions, assuming but not conceding that there is ambiguity in the February 19th and 25th original letters constituting the settlement agreement.

The escrow instructions are before the court as Exhibit F. They are the usual printed form, having provisions for insertions. I am going to read only a part of it in order [609] to conserve time, but I invite your Honor to peruse the entire docu-

ment. One part of the insert type written provision is:

“Also hold for me Bill of Sale executed by F. I. Richman and Lyda Tidwell, formerly known as Lyda Nagel, Trustees under Declaration of Trust, known as ‘Richman Trust’, dated November 1, 1945, to Lyda Richman Tidwell, a married woman, as her sole and separate property and covering all furniture and furnishings for apartment buildings located on the above-described properties. My signature thereon as one of the trustees constitutes my approval as vendee of said Bill of Sale.

“Also hold for me an instrument or instruments of transfer to me covering all other and remaining assets of said Trust, the same to be approved by my attornel, Laurence B. Martin. I will also hand to you for delivery to F. I. Richman at close of escrow a full and complete and general release in favor of F. I. Richman and all other parties named as Defendants in the above entitled United States District Court Action when you can hold for me a full and complete release in my favor executed by said [610] Defendants. The form of these mutual releases is to be approved by my attorney, Laurence B. Martin and by Joseph T. Enright, attorney for F. I. Richman. Notwithstanding the printed provision in these instructions, I agree to pay, in addition to the buyer’s costs and expenses in this escrow, all of the seller’s costs and expenses of this escrow and the cost of the policy of title insurance, revenue stamps, and recording and filing

all instruments and documents and the seller's escrow fee.

"These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me and with which agreement California Bank is not to be concerned.

"I will hand you a Quitclaim Deed from my husband, Albert Ray Tidwell, covering the above described property creating sole and separate property in me."

Now, that is the typewritten insertion in this escrow instruction, Exhibit F, and it specifically provided, "in addition to the buyer's costs and expenses in this escrow all of the seller's costs and expenses of this escrow and the cost of the policy of title insurance, revenue stamps, [611] and recording and filing all instruments and documents and the seller's escrow fee" are to be paid by Lyda Tidwell.

Now they come in here and they ask us, or they want to charge us for the whole of the revenue stamps and the escrow fee, and I suppose half of the other items.

In other words, there is no uncertainty in these escrow instructions.

Let's continue on on the proposition of the pro-ration of taxes, where they want to charge us with some \$4,000. On the back page of the printed portion of these escrow instructions, it has some blank spaces for insertion, and the very top line reads:

“The following adjustments only are required in this escrow.”

Specifically, there are to be no adjustments, and, specifically, it provides no proration of taxes and no proration of rents.

Now, this paragraph typed into the escrow instructions above the signature of Mr. Richman is significant, and I read it in its entirety. It is added to the printed portion:

“Notwithstanding any of the printed provisions herein, I, the undersigned, F. I. Richman, am not to be at any expense under this escrow.” Now, we stand firmly upon the ruling that your Honor [612] made on June 21st, when your Honor sustained an objection to the introduction of parol evidence tending to show what the amount of dollars would be on a proration of the taxes.

If there is any uncertainty in the written contract, which is received in evidence as Exhibit H, being the two letters, it was clarified. It was not modified. It was not amended, or it was not in any manner changed by the escrow instructions.

Therefore, when Paragraph 4 of the offer of Mr. Richman, which was made on February 19th, is to be considered, especially when it is to be considered under these circumstances, as stated in the third paragraph of the letter, and I quote the third paragraph, the letter being addressed to Mr. Martin:

“In regards to your request that I spell out ‘exactly’ the precise terms and wording of the release, I do not think that is at all necessary. Any

agreement made contemplates a full release of any and all claims that either Mr. Richman or Mrs. Tidwell have or think they have against the other from the beginning of the world to the present time. If this matter is going to be terminated, it is my desire to have it terminated completely and not by use of trick terminology which might subject it to other lawsuits in the future." [613]

Now, the proposed settlement was in paragraph four, where this dispute now apparently arises, and which we say is completely clarified by the escrow instructions. It is as follows:

"A stipulation shall be entered into that the Receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954, on or until the re-appointment of a receiver as might occur under 7(c) hereof."

The next paragraph, and apparently they claim it is ambiguous, because otherwise I don't know why they are asking us for these large balances, reads:

"The Receiver shall file his report and after the payment and/or provision for all of the Receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman."

Now, in their memorandum they have asserted that taxes are not an operating obligation.

I will assume that legal minds could differ as to

what does the term "operating obligations" mean. I know from my own experience in utility cases before the California [614] Public Utilities Commission operating obligations for utility purposes include taxes.

As to what it means between two businessmen or a businesslady and a businessman, the lady being represented by attorneys and advisors, and so forth, there is no certainty in the law or in the cases anywhere, that when that same party signs an escrow instruction two or three days later, which specifically provides, "The following adjustments only are required in this escrow," and when it comes down to taxes and when it comes down to rents—maybe I had better read it concerning taxes:

"Prorate taxes, including all items appearing on tax bill except taxes on personal property not conveyed through this escrow, to None."

"Prorate rentals on basis of statement approved by me, to None."

I submit, your Honor, there should be no argument on the proposition; that we have in our pre-trial memorandum, dated June 16, 1954, and if I could call that one to your Honor's attention when you have to deliberate on this matter, June 16, 1954, page 9, which is an exact accounting, and which I am sure is correct, and I think your Honor will sustain our objection to the introduction of this claim for revenue stamps, escrow instructions proration of taxes and proration of rents. [615]

That is the only means by which I say we can avoid an expensive trial.

Mr. Camusi: Aren't you going to comment, or does that mean you have conceded the point of the fees that have been claimed?

The Court: When this matter was set for argument today, everybody said it could be done in a few minutes. You have already taken about 25 minutes. I take it he is relying on his memorandum.

Mr. Enright: I am not conceding those amounts at all.

Mr. Camusi: O.K.

Mr. Enright: I don't think that I have anything further to add.

(Another case called.)

Mr. Camusi: Your Honor, in this case we start out with this offer letter of February 19, 1954, and, as Mr. Enright states, there is no question that we unqualifiedly accepted that. And Mr. Enright states that creates a contract. There is no question that we had a contract providing for the settlement, and the ultimate complete, final disposal of this case.

Now, what did they say in that contract? The very first point is that there should be mutual releases from the beginning of the world to the present time.

The second point is that both parties shall bear their [616] own expenses.

Now, we are the offerees, and we are entitled to take that at its face value, that those parties shall bear their own expenses from the beginning of this lawsuit to the very end.

So when we get into escrow, unless your Honor decides something happened at escrow to change

this situation, why should we all of a sudden bear Mr. Richman's expenses.

Now, the paragraph on mutual dismissals is the third point. We gave those.

Paragraph four is:

“A stipulation shall be entered into that the Receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 * * * ”

Now, we have a right to take that to mean when March 1st comes around, when we took possession under this agreement, we were entitled to all of the receipts of moneys, as we were entitled and obligated to pay all of the obligations of the trust, beginning March 1, 1954.

Now, I don't think there is any question that real property taxes in a trust which is concerned with the rental of apartment houses is anything but an operating expense or obligation, and I have cited a case on that point in my [617] memorandum.

Then in paragraph five I think it goes further, to state that:

“The Receiver shall file his report and after the payment and/or provision”—in other words, the Receiver might not have paid it, but let's make provision for those payments, if he hasn't done so. That is the way I take this to mean. —“the Receiver shall file his report and after the payment and/or provision for all of the Receiver's claims and expenses and operating obligations of Richman

Trust to February 28, 1954, any funds remaining shall be divided equally * * * ”

Now, Mr. Enright states, and I think that possibly this is where the nub of the contention is concerned, he says there is nothing in this contract on proration, and, therefore, there isn't any proration, and then you get to your escrow instructions, and that nails it down, but that isn't the case.

There are authorities directly in point on that question. *King vs. Stanley*, 32 Cal. 2d—I might say I did not cite this, or, rather, I may have, but I did not do more than cite it. It is *King vs. Stanley*, 32 Cal. 2d. 584, and there it is stated:

“* * * Equity does not require that all the terms [618] and conditions of the proposed agreement be set forth in the contract. Though usual and reasonable conditions of such a contract are, in the contemplation of the parties, a part of their agreement.”

Now, here is our position as to the taxes, as to their proration: I think it is set out right in paragraph four here just how it is to be handled. We are to get the receipts for the month of March.

The Court: Paragraph 4 of your settlement agreement?

Mr. Camusi: Of the offer letter. I think that sets it out, and it also sets out we are responsible for operating obligations from March 1st.

But assuming that that is vague and does not cover the point exactly, here is a very late Supreme Court case of this State saying that all of these incidental matters which come up in a con-

tract are in contemplation of the parties a part of their agreement, and then says:

“In the absence of express conditions, custom determines incidental matters relating to the opening of an escrow, furnishing deeds, title insurance policies, prorating of taxes, and the like.”

Mr. Enright: Will you give me that citation?

Mr. Camusi: That is 32 Cal. 2d 584, and citing other cases. [619]

In that case the defendant contended that the escrow instructions did not follow the alleged contract obligations but included different terms which had not been accepted by her. In other words, the original contract, your Honor, in that case could not provide, I believe, for her to pay the policy of title insurance, or some of those incidental things which arise, and the court said:

“The escrow instructions were merely customary and expected directions to the escrow company to carry into effect the executory agreement. Such instructions do not take the place of the agreement of sale, but merely carry it into effect.”

In other words, it was necessary, in order to carry this contract into an executed status, to go into escrow, both sides realized that, and as soon as we accepted this offer unconditionally, both parties were willing this matter go into escrow.

Now, that escrow was just a mechanical device whereby both parties could carry out their intention of settling this case, as expressed in the letter written by Mr. Enright, the offer letter of February 19th of this year.

Certainly, having accepted that, we are not going to go into escrow and change that contract, and give them something they had not bargained for in their offer, unless your Honor believes we did something in escrow to change [620] this original contract.

Now, in *O'Donnell vs. Lutter*—and I believe this is a new case, your Honor, *O'Donnell vs. Lutter*, 68 Cal. App. 2d 376, the court says that in these contracts of sale there is an implied provision of taxes and rent.

Now, if that case is right, and I think it is, when we look at this agreement, if it does not say so on its face, and I think it does,—but assuming this contract offer of Mr. Enright's did not say so on its face, then it is an implied condition of this contract that we will prorate taxes and rent.

So we get into escrow, and it is true the escrow makes instructions and statements attributed to it by Mr. Enright, but they all say in effect, and regardless of what is provided in print in this escrow instructions, you will do it this way in this escrow.

But how are we going to ignore the express language of the escrow instructions, which state:

“These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me”—meaning Mrs. Tidwell—“and with which agreement California Bank is not to be concerned.”

In other words, California Bank is not concerned in following out, as the escrow holder, and they are not [621] interested in following out our agreement to the letter. They are merely providing us with a

vehicle by which we can carry our agreement to completion.

So it is our contention that the meaning of our contract goes right back to the offer letter of Mr. Enright, and since we paid approximately the amount as set forth, close to \$5,000.00 in taxes for the first two months of the year, January and February, it is our contention that those expenses are operating obligations and should be shared equally by the parties. What happened was we had to pay them all, and Mrs. Tidwell paid all of those out of her own pocket.

I think that answers the argument on the taxes, and it also answers the argument on the proration. It answers the argument on the seller's escrow expenses. Why should we pay Mr. Richman's expenses when the agreement specifically states that each party is to bear his own, and, further, when it is an implied condition of the contract that the seller pays his escrow expenses.

It also answers the question of the revenue stamps.

Incidentally, there are two acts involved under the question of the stamps on a deed. The last one is the Act of February 24, 1919, 40 U.S. Stats. 1057.

The court at 15 Cal. Jur. 2d., Section 1777, and in *Cole vs. Ralph*, 252 U.S. 286, 240 Supreme Court 221, stated [622] that the earlier Act contained language making the deed void, and that a deed would be inadmissible in evidence if it did not have the stamps on it.

Now, the Act has been changed to the extent, for instance, that the State of California states the Fed-

eral Government cannot tell us what is or what is not a legal conveyance in this State, and the conveyance is legal, but there is still a fine and a criminal action, as well as civil, against the party for failure to put stamps on the deed. That is an obligation by custom, as well as by law, on the seller, and why should we pay for the revenue stamps, and why should we pay the expenses that are attributable to the seller?

One other case which states that these usual and reasonable terms are in contemplation of the parties a part of such contract is *Janssen vs. Davis*, 219 Cal. 783, at page 788.

Now, on the question of proration, I was not present, but I read the transcript of the proceedings had on this question, and Mr. Enright stated he was willing to stipulate that the Receiver had collected \$1,290.00, or, rather, that Mr. Udall, Mrs. Tidwell's representative, had turned over to him the sum of \$1,290.59, which represented rents which had been collected near the end of the month of February, and turned over to the plaintiff in this case. [623]

Now, this point was not made, your Honor, but it is our contention that of that sum, anyway, only \$432.34 was February rents, and if the court believes that a proration is the proper thing in this case, I think a sub-accounting should be had to demonstrate that point.

As to the proration of the rents, I think these managers' reports for the five apartment houses will show when the rent was due, and when it was

paid, so that in that sense it can be seen that during the month of February certain rents were collected which were properly for the month of March. And I would like to offer those into evidence, together with these utility bills.

I noticed in the transcript that Mr. Enright said we might introduce the utility bills into evidence, and I offer those exhibits at this time.

Mr. Enright: To which objection is made upon the grounds heretofore argued, and heretofore stated, and if such documents are received in evidence, of necessity there will be created an issue as follows:

Concerning the real-property taxes, which are claimed to be some \$4,000.00, if proration is to occur, of necessity there will have to be proration of the personal-property tax claims paid by Mr. Richman on personal property on a much larger sum.

Second, as to the rents received by the managers before [624] March 1st, which under the court order were to go to the Receiver, and which in fact were picked up by Mr. James Udall, there is no dispute in the evidence concerning those, in the amount of \$1,290.59, it can be prorated, and then, of necessity, you must look into the rents, the delinquent rents, that were collected in March, because if we are going to prorate, we will have to prorate both ways to be equitable and fair.

Thirdly, if we are to prorate utility bills, these bills here, this bundle of bills show errors in mathematics.

Fourthly, it shows right upon its face that they are attempting to charge Mr. Richman with long-distance phone calls, and similar charges.

Also, I submit that the tenants pay when they get their bill for their month's rent, and they would have paid in March.

And there are a lot of details of questions of fact, and if we are going to entertain some implied covenant to prorate, or some implied custom to prorate, when we have this express contract, I submit that if we try the matter we will take at least a number of days to hear it.

The Court: Sustained. Just a moment.

(Another case called.)

The Court: Proceed.

Mr. Camusi: I don't know what that ruling means. If [625] it means your Honor does not care to take evidence at this time, and you are to decide an accounting should be had, that is perfectly agreeable to us, but I hope it does not mean your Honor has ruled before I shall have made my argument as to what the law is on this issue in the case.

The Court: If on the main contention I should ultimately decide you are right, we will refer the whole question to a Master for the taking of evidence.

Mr. Camusi: I see.

The Court: But I think at this time that you are bound by the agreement.

Mr. Camusi: Oh, that is my point, your Honor.

The Court: The agreement seems to the court to be rather clear on this, and to treat on it rather

against your contention, although that is tentative.

Mr. Camusi: I would like to call the court's attention to this, that when a person makes an offer saying that the offeree must assume all operating obligations from March 1st, certainly the offer must be interpreted, if it is capable of two interpretations, must be given that favorable to the offeree, since the efferor has chosen the language.

It is difficult for me, looking at this offer, to see how we can be held solely responsible for taxes, why we should personally assume obligations which had occurred [626] prior to March 1, 1954.

That is the point I am making, and that is that these obligations had occurred prior to March 1, 1954, and they were operating expenses and obligations in prior months.

Now, with respect to the petty-cash fund, that was a trust. Again looking at the offer, we purchased in effect, all of the rights, title and interest of Mr. Richman in and to the assets of this trust. One of the assets was the petty-cash fund. That does not even fit into Paragraphs 4 and 5. It is not an obligation of the trust. It is not a receipt. It is an asset that is used for all purposes, as any petty-cash fund is. There is nothing special about the petty-cash fund. We purchased that, and now Mr. Richman wants half of that.

The question also arises as to this fee Mr. Richman has been claiming. This was a fee for November of 1953, which was the month immediately preceding that in which the Receiver took over. Now, up until the time this agreement was made, we must

realize there was a judgment of record, and unless a new trial had been granted, or the judgment had been reversed on appeal, that judgment would become final. That judgment voided the trust, canceled it, and there was a finding that the fees of the Receiver had been excessive, and then I believe the court made a finding that six per cent would have been a reasonable fee. [627]

Looking at that as the background here, we had a situation where, had that judgment remained in effect, we would have had a good claim on Mr. Richman for that additional four per cent charged Mrs. Tidwell over a period of some years, amounting to a good many thousands of dollars. Now, we released——

The Court: I am sure that you would.

Mr. Camusi: How was that?

The Court: This trust was not void, but voidable, and when she coasted along with it for years, and paid part of the burden, wouldn't she have accepted it until a certain period of time? Just to keep from having laches run against her, wouldn't she find herself with what she accepted?

Mr. Camusi: That isn't what I read in the cases. The court held if the fees were excessive at the cancellation of the trust, she would have a return of the excessive fees.

Th Court: At any rate, it wasn't a settled issue.

Mr. Camusi: At any rate, I cite that as the background to this case.

Now, why should Mr. Richman get that? Evi-

dently, he is relying on Paragraph 5, so let's devote our attention to that:

"The Receiver shall file his report and after the payment and/or provision for all of the Receiver's claims and expenses and operating obligations * * *"

It does not talk about Mr. Richman, and under the first paragraph, if we have to pay this, it is a personal obligation that is owed by Mrs. Tidwell to Mr. Richman, and yet both parties have mutually released each other of any claims.

To my mind it is inconceivable, under the wording of this offer, that Mr. Richman should be paid one-half of the fee which he had been charging for all of those years, and which this court held to be an excessive fee.

Now, I would like to say this to the court on that mortgage payment. I satisfied myself that that is actually an obligation paid by the Receiver for the month of March, and in line with my argument on what is right, I am willing to stipulate here that that should have come out of their joint funds, or, rather, that should be paid by Mrs. Tidwell individually rather than coming out of the joint fund.

Apparently I am not going to get any stipulations in the other direction, however, favoring me.

There again the Receiver paid that. We are not taking technical advantage of that. If it is an obligation that becomes due March 1st, all right, we will pay it. But in like event, we expect those obligations which existed prior to March 1st to be obligations for which provision should be made. That

is the offer as made by Mr. Enright, and provision should be made for those out of this fund, so that [629] Mrs. Tidwell does not pay the 100 per cent out of her own separate funds.

Mr. Enright: May I address the court briefly, please, in closing, with the statement that whereas the \$2,000.00 should be charged to Mrs. Tidwell, that, certainly, is not going to obtain any admission from me that that \$750.00 petty-cash fund should not be charged to Mrs. Tidwell. It should be charged against her.

You remember, your Honor, we introduced in evidence as one of the exhibits to this pretrial, the stipulation of February 26, 1954, which evidences the signature of both attorneys, and the order made by your Honor on February 26, 1954, to finally wind this matter up, and it very clearly spells out the Receiver is to retain the money in the bank under his control. He had five managers out there, and that money was under his control, and when Mr. James Udall is going out and picking it up on a Sunday morning, that is not going to obtain a stipulation from me that we should split with anybody.

Now, your Honor's ruling, I think, disposes of the contentions made by the plaintiff here, that is, that they are not permitted to come in here by parol testimony and vary the terms of their written contract.

So I cannot see that I have anything else to offer to aid the court in arriving at its decision, except

again I [630] refer to page 8 of my memorandum which contains the accounting.

I might refer, briefly, to page 9, to Mr. Richman's \$3,104.00 fee, under the written contract which the court held was voidable, and that item is included in the Receiver's report, there being a claim of that charge, and our charge is against the Receiver, so we did not want to go through the circuitry of prosecuting the claim against the Receiver, and then back out against the other party.

We will submit the matter.

The Court: The court will have to go through all these memoranda. I had gone away after the last hearing and had not given Tidwell vs. Richman any great attention. I had expected, being the good lawyers you are, that you would cut across the legal issues and get this matter settled. But since you haven't, the matters are pretty well set out in those legal memoranda, and I will take it under submission and give you a decision rather quickly; at least, as quickly as I can.

That disposes of our 9:00 o'clock calendar.

(Another case called.)

Mr. Enright: May I address the court?

The Court: Yes.

Mr. Enright: I thought it might be a convenience to the court if I left the advance opinion in the Leiter case. [631]

The Court: Surely.

Mr. Camusi: May I make one statement to the court? The only memorandum we have in the file, and there was only one filed on this subject, but

it includes most of the citations, and it is the memorandum of points and authorities of plaintiff regarding pretrial hearing on distribution of funds, and was filed by plaintiff June 16, 1954.

The Court: Very well. [632]

* * * * *

Los Angeles, Tuesday, Oct. 12, 1954, 9:30 a.m.

The Court: We are on the record, but in a sense off, in that this is not a proceeding in open court, but my law clerk reported to me one day last week that he had heard from Mr. Whyte, and Mr. Whyte is very emphatically dissatisfied with the fee which the court awarded him.

He wanted to know by what process it might be brought to my attention, and the law clerk reported to me he told him it would be brought to my attention by his coming in and telling me.

I indicated at that time a willingness to have the matter presented either formally or informally. Counsel being of the view that they wished to proceed informally, we are here informally upon informal notice, but Mr. Richman is present personally, and Mr. Enright is here and Mr. Camusi is here. Mrs. Tidwell is not here. Mr. Whyte is here.

Mr. Whyte: Mr. Hallberg is ill at home with a bad back. Otherwise, he would have been here.

The Court: Well now, what do you want to urge?

Mr. Whyte: I propose to examine the amount of the fee awarded by the court to the attorney for the Receiver by several different criteria.

Let's examine it first from the standpoint of what the labor leaders might say as a living wage.

If I might circulate [634] these breakdowns of hours devoted among the court and counsel.

Mr. Enright: May I inquire, is this some new evidence or additional evidence being presented?

Mr. Whyte: No.

The Court: No, this is just an informal conference, Mr. Enright. If it comes to a point of taking evidence, we will adjourn to the court to take it there. So if you want to offer evidence, as evidence, let us know and we will proceed that way.

As it is, I am simply holding a conference between disgruntled litigants, who are disgruntled with the court today. They used to be disgruntled only with each other.

Mr. Whyte: If the court will note from the first page of the original petition for allowance of fees, it covered services to and including March 17, 1954. It showed a total of 91 hours of attorney's time.

Quite a point was made in court by Mr. Enright of the fact that I accompanied Mr. Hallberg in the collection of rents from apartment house managers before his bond was approved.

My time slip for that day shows six hours covering, not only the collection of rents with Mr. Hallberg, but accompanying him to the Union Bank to open a new account in the name of Hallberg as Receiver. I propose that six hours be deducted [635] from the 91-hour total shown in the original petition, so there may be no question about the item whatever. I have therefore set forth in the margin the total of 85 hours in the original petition.

The supplemental petition for fees covered services to and including May 10th. It showed a total of 28.4 hours of attorney's time, of which eight hours was allocable to services performed in connection with the defense of the Receiver's attorney against Mr. Richman's objections to the allowance of their fees.

Inasmuch as the services rendered in defending the attorneys against the objections made to their fees, are not compensable, I have deducted the eight hours from the total of 28.4 hours shown in the supplemental petition and placed in the right-hand margin the figure of 20.4 hours.

I will briefly run through my time slips since the supplemental petition was filed. May 11th. My time slips show five hours devoted to the following services: Telephone call from Receiver re evidence to be presented at May 12th hearing; figuring breakdown of hours of attorneys' time for inclusion in supplemental petition for fees to Receiver's attorneys;

Studying Hallberg's deposition; conference with Jefferson Mann in preparation for his direct testimony as to reasonable value of Receiver's services;

Dictating and revising draft of hypothetical question to Mann as an expert witness as to the value of Receiver's services.

There should be deducted from that total the time of approximately .3 hours, which I devoted to calculating the breakdown of hours of attorneys' time to be included in attorneys' supplemental petition for fees.

The rest of the time was devoted exclusively to the defense of the Receiver. I therefore place the figure of 4.7 hours in the margin.

May 12th. My time slip shows 5.2 hours devoted to the following services: Conference with Hubert Laugharn re his testimony as to the reasonable value of services rendered by Receiver's attorney;

I was in court on the hearing on Mr. Richman's objections to report and petitions of Receiver and his attorneys for fees;

I spent approximately one hour with Mr. Laugharn that morning before I came to court. I am therefore deducting that hour from the total of 5.2 hours and have placed the figure of 4.2 hours in the margin as allocable to the defense of the Receiver.

My time slip for May 13, 1954, shows 3.1 hours devoted to the following services: In court re hearing on defendants' objections to report and petitions of Receiver and his [637] attorneys for fees;

Telephone call to Mann and thanking him for his appearance as an expert witness; 3.1 hours.

The Court: You think your expression of thanks is something for which you should be paid?

Mr. Whyte: I think my expression of thanks took about .1 of an hour to telephone, your Honor. If you would like to deduct .1 of an hour from that total, I will be pleased to do so.

The Court: Well, it just doesn't seem consistent for us to be rendering charges for the ordinary courtesies, and I suppose that your other services

had courtesy in them, even though courtesy is not included, or at least you are not charging for courtesy as such except in this one instance, so far as we have gone with this document. I haven't read it beyond where you have now come to.

Mr. Whyte: My time slip for May 14th shows a total of 5.8 hours devoted to the following services: I was in court on the hearing on defendants' objections to report and petitions of Receiver and his attorneys for fees;

I conferred with Mr. and Mrs. Hallberg during the recesses in the hearing; I prepared and dictated a hypothetical question to Laugharn as an expert witness regarding the value of the attorneys' services.

Approximately one hour of my time on that day was devoted [638] to preparing the hypothetical question to Mr. Laugharn, so that I have deducted that from the total of 5.8 hours and placed a total of 4.8 hours in the margin.

My May 17th time slip shows 3.5 hours devoted to the following services: Conference with Mrs. Hallberg re matters to be offered in evidence on cross examination of Mrs. Kennedy.

The court will recall that she was one of the apartment house managers who testified for Mr. Richman.

In court on hearing of report and petitions for fees of Receiver and his attorneys; 3.5 hours.

May 25th. My time slip shows .6 of an hour devoted to conference with Paul Fussell re his appear-

ing as an expert witness, as to reasonable value of my services.

Since that item is not compensable I have not placed it in the right-hand margin.

On June 7th my time slip shows 4.3 hours devoted to the following services: In court re Receiver's report and petition for fees as well as attorneys' petition for fees;

Approximately one hour of this total allocable to defense of Receiver and 3.3 hours allocable to defense of Receiver's attorneys.

The court will recall about 11:00 o'clock in the morning I stood up and announced I was ready to present the case for the attorneys for the Receiver. I took the stand and was [639] cross examined after lunch by Mr. Enright.

Mr. Laugharn, my expert witness, took the stand late in the afternoon and was cross examined by Mr. Enright.

May 13, 1954. My time slip shows 3.1 hours devoted to the following services: —I beg your pardon. I haven't turned the page.

June 8, 1954. My time slip shows 3.1 hours devoted to the following services: In court re hearing on Receiver's report and petition for fees as well as petition for fees to attorneys for Receiver. Approximately one hour allocable to defense of attorneys' fees.

In that connection, the court will recall Mr. Fussell came in the morning, took the stand for a short time and was cross examined by Mr. Enright. I have allowed an hour. I think it is perhaps a little

more time than was allotted to Mr. Fussell's testimony.

In any event, I have placed the total of 2.1 hours in the margin, which is allotted to the defense of the Receiver's fees.

June 9, 1954, my time slip shows .1 of an hour devoted to the following services: Consideration of letter from Camusi enclosing Department of Employment form of notice of delinquent return with request that Receiver prepare same; letter to Hallberg enclosing notice of return.

June 14th, my time slip shows .3 of an hour devoted to [640] the following services: Telephone call from Mrs. Hallberg re notice of delinquent return form from the California Department of Employment;

Telephone call to Laurence Martin re preparation of this return; dictated note to Camusi to be delivered to him along with the return.

June 17th my time slip shows .8 hours devoted to the following services: Study of file in preparation for final argument re objections to Receiver's report and petition for fees.

Approximately .3 of that time is probably allocable to my preparation of an argument on behalf of my own fees, so I have inserted the figure of .5 hours in the margin.

June 18, 1954. My time slip shows 1.4 hours devoted to the following services: In court re final arguments on defendants' objections to report and petition of Receiver for fees and petition of attorneys for fees.

Perhaps of that time I spent .5 of an hour in defending my motion as to being entitled to fees.

I have, therefore, totaled the hours devoted to the administration of the affairs of the receivership during the three-month period on those matters which came up regarding the receivership after its termination, together with the time spent defending the attack made on Mr. Hallberg's petition and his report. It comes to a total of 130.6 hours. [641] If that total is divided into the fee of \$1,000.00, which the court has awarded to me, it is approximately \$7.70 per hour.

I say in all sincerity if Mr. Hallberg, in my opinion, is entitled to counsel whose competence and ability are worth more than \$7.70 an hour, this is a case in which he should be well represented, and if the court feels that my time is worth only that sum, then perhaps I should be removed as his counsel.

Now, I think studies of time devoted by attorneys to their practice show that compensable time per month for attorneys who work, work hard, is approximately 125 hours a month.

All of us, the court, Mr. Enright, Mr. Richman, Mr. Camusi, have been practicing attorneys. We know that if we can perform six hours of compensable work a day, with the demand on a lawyer for a certain amount of charitable work, office administration, work for which he is not paid, that we are doing pretty well. That is around 30 hours a week of compensable time, or about 125 hours a month.

Hence, I have devoted approximately one month's time out of a year to the work performed in connection with this receivership.

The overhead in our office is approximately \$1,300.00 a month, and lest there be any charge that that is too high, [642] in our office it runs about 23 per cent of our gross. In most offices the overhead is between 25 per cent and 33 $\frac{1}{3}$ per cent.

My half of the overhead, since I have one partner—there are only two of us in the office—would be \$650.00. On the basis of the fee awarded me by the court of \$1,000.00, I would have made a net profit for a month's time of \$350.00. That is salary which is paid to a lawyer fresh out of law school who begins work at O'Melveny & Myers today.

I have been practicing in this city for 13 years, which is a little more experience than the chap who has had no experience and been employed directly out of law school at a figure of \$350.00.

Let's examine the court's fee from another criterion, namely, the criterion of the testimony presented by the expert witness. It has come to my attention that the court felt that possibly Mr. Laugharn, one of the two expert witnesses, was testifying about work in connection with receiverships in general and not with respect to the particular work performed in this receivership.

Naturally, before I brought Mr. Laugharn to court I submitted to him my files, particularly my pleading clip. He went over all the documents on that clip, including the petitions which I had filed

with the court in connection with the administration of the affairs of the receivership. [643]

He went over carefully the original petition for fees, supplemental petition for fees. He went over the report that I had prepared for the Receiver.

Naturally, he carefully examined the objections filed by Mr. Enright. And the court will recall that on his direct examination I laid that foundation. He testified that he had examined all of those documents.

My question to him as an expert witness was as follows:

“Mr. Laugharn, please assume the following facts:

“John Whyte, the attorney for the Receiver, has been engaged in the active practice of the law in Los Angeles, California, for a period of from 12 to 13 years;

“For 10 years he was associated with the office of O’Melveny & Myers, one of the leading firms of attorneys in this city;

“On or about December 1, 1953, he was employed as attorney for the Receiver herein and has continued at all times to represent the Receiver;

“The Receiver was removed from his active duties of management of the business and affairs of the former Richman Trust on February 28, 1954;

“After the Receiver’s removal on that date, Mr. Whyte prepared the Receiver’s Report and Petition [644] for Allowance of Fees, and in addition he performed certain necessary services after February 28, 1954, in connection with the administra-

tion of the business and affairs of the former Richman Trust;

"Assuming further that Mr. Whyte performed all or substantially all of the services specified in the Petition and Supplemental Petition for Allowance of Fees for Attorney to Receiver, exclusive of services necessarily rendered by him in defending the Receiver and his attorneys against objections filed by defendant Richman to the Report and Petition for Fees of the Receiver and his Attorneys, which said services were performed commencing on or about December 1, 1953, to and including May 10, 1954;

"The time devoted by Mr. Whyte to the rendition of said services, excluding services rendered in defending the Receiver and his attorneys against the objections raised by the defendant Richman to the Report and Petition for Fees of the Receiver and his attorneys, has been approximately 100 hours;

"The assets of the former Richman Trust, which has been administered by the Receiver, have [644-A] a fair market value of approximately One Million Two Hundred Thousand Dollars;

"On the basis of these facts, what is your opinion as to the reasonable value of such services?"

The court will recall that Mr. Laugharn gave the opinion that the services would be valued at a thousand dollars a month for each month of the receivership, that would be December 1953, January and February of 1954.

The court will further recall that there was no

expert testimony adduced by Mr. Richman in opposition to testimony presented by me.

And I further presented the testimony of Mr. Paul Fussell, who is the senior corporate attorney at O'Melveny & Myers, regarding the reasonable value of my services in defending the Receiver against the attack made upon his report and petition for fees.

In that connection the court will recall that we were engaged in hearings on six different court days. Approximately four of those days consisted of a morning and afternoon session, and on two of them there was either a morning or afternoon session.

I have already recited the hours spent in preparing for that hearing. There was a day and a half of depositions. Mr. Enright took the deposition of Mr. Hallberg and myself in advance of the hearing.

Mr. Fussell testified, on the basis of those facts and some others which were put to him, that the reasonable value would be between \$1,000.00 and \$1,200.00.

Again, speaking to the court and to those of us who are [645] present and members of the Bar, I think any of us, particularly these gentlemen here who are trial lawyers, appreciate the fact if they are called upon to try a case in court lasting a week, depositions in advance, preparation for that trial, that a charge of \$1,000.00 is certainly not unreasonable.

One final criterion which I might briefly allude

to, the court and I had the pleasure of working on the Inglewood Federal case which involved the appointment of a conservator for a savings and loan association in Inglewood. I was one of the counsel, one of the interested parties to the lawsuit.

The court appointed a conservator for the Association on a Friday. The conservator arrived at the Association between 7:00 and 8:00 o'clock in the evening.

He was relieved from his office at about 11:00 o'clock the following Monday morning. And during that period of time he was almost constantly at the Association, and I know that his attorneys performed valuable services on his behalf during that three-day period.

There was one court appearance necessitated on behalf of the attorneys during that period, which was in connection with the order that came from Washington appointing the conservator from the Home Loan Bank Board to surplant the conservator appointed by this court.

Thereafter the attorneys for the conservator filed a report covering his services and a petition for fees to him [646] and to themselves. In their petition they stated that they had devoted 40 hours of time to their work on behalf of the conservator.

A hearing was held in this court which took approximately one hour. The only attack made upon the report and petition for fees was an attack made by Mr. Hoffmann representing the Home Loan Bank Board, to the effect that the court had no jurisdiction to appoint the conservator, in the first

place, and therefore any award of fees to him or his attorneys would be highly improper.

The hearing, as I say, took approximately one hour. No other attack was made upon the report or petition for fees.

Thereafter, the court granted to the conservator a fee of \$2,000.00 and a fee to his attorneys of \$1,000.00.

If I may briefly compare the two cases, in the one case, the conservator case, which I freely admit was an important case, there was a run on the Association at the time, and an excellent attorney was appointed for the conservator, and the conservator was an excellent man. As I say, the period of the conservatorship was about three days. The attorneys filed one petition with the court during that period.

Thereafter, they filed a petition for fees alleging 40 hours of services. And one hour devoted to the hearing on that petition in the court.

The fee awarded to the attorneys was \$1,000.00; to the [647] conservator was \$2,000.00.

In this case the period of receivership was three months. I made approximately four court appearances during that period in the presentation of petitions on behalf of the Receiver, such as a petition for permission to renovate the apartments, pay bonuses, petition in chambers to have me appointed as the Receiver's attorney.

After the close of the three-month period of the receivership I devoted six court days, perhaps four, what we would regard as full court days, and two half court days, in defending the Receiver against

the attacks made upon his report and petition for fees, and a day and a half in depositions, preparation, working with the Receiver as to the evidence which would be adduced at those hearings.

In this case the fee awarded to the attorneys for the Receiver was \$1,000.00 on the basis of 130 hours, and the fee awarded to the Receiver himself was \$6,000.00.

That concludes my remarks with reference to the fee, except that I might make this statement:

Any lawyer is embarrassed to come before a court and state in his opinion the fees fixed by the court are too low. No lawyer likes to be placed in the distasteful position of arguing about his fees with the court or with counsel.

I am distressed that it should have been necessary for me to ask the court for this opportunity. I thank the court [648] for having granted me the opportunity to present my petition.

I am open to any questions concerning my petition or any other facts which took place during the receivership.

The Court: Having met you outside the court as well as in, and having a personal liking for you, it is embarrassing to the court to have the matter come up.

You will recall at the very outset the court had Mr. Hallberg here. I had asked him to come in. He was not on the list of persons who wanted to be appointed receivers.

I felt, from an acquaintance and the reputation of the man, that he would serve here as the court

desired a receiver to serve. I said to Mr. Hallberg, and I think I said to you at the very outset, that one of the reasons why Mr. Richman has been removed is that he went out and got a life contract for work at an excessive fee.

And there was ample evidence here in court that the fee he was charging was excessive. This was primarily a property management affair. For the Receiver it was to be less demanding in one sense, if it had run its normal course, than if he were the trustee under the Richman Trust, for the trustee under the Richman Trust had broader powers and duties than simply those of property management.

The Court was interested, however, that the expense of a brief court supervision of these properties, pending what was then determination of an appeal, or it was a promised [649] appeal then, or the possibility of settlement, the court was interested that the court's administration of the property should not be as costly as that which the court had found was excessive. I expressed that to everyone in the case.

Now, Mr. Hallberg asked for less than he got out of the court. I increased, not the prayer of his petition, but the tenor of his testimony, because I felt that he had not given any account to the element of having to account so fully in court, as well as by the accounting which he had prepared and filed.

He was brought before the court almost as if he were accused of a crime here and was treated by some of the parties to the suit, or by one of the par-

ties to the suit and one of the attorneys to the action with less respect than I have seen embezzlers treated when I was handling the criminal calendar of the court.

So far as the court's desire to hold down the expense is concerned, that is always a desire of the court and should always be a desire of the court.

I remember Judge James—I am always remembering what other judges have said, which is perhaps what lawyers are supposed to do, because it is what other judges have said, which establishes a body of precedents by which we proceed.

I had occasion to resist a fee before Judge James in a [650] matter where an involuntary petition in bankruptcy had been filed. The creditors had become personally dissatisfied before the day of the hearing on whether the man should be adjudicated a bankrupt.

The only thing that remained was the fee. The attorneys said, "Well, this was a large estate of a bankrupt. The creditors' claims were large. The fact that relatives had come forward and paid them off doesn't relieve us of the fact or the history. Here I, as an attorney, have rendered services concerning a large sum of money, even though the services didn't take a lot." A thousand dollars, I thought, was too much.

Judge James then said, "Lawyers should always remember that the lawyer exists for the litigation and not the litigation for the lawyer. The court exists for the litigation and not the litigation for the court."

He went on to point out some of the more idealistic statements which have been given by the writers on ethics, and the professional as distinguished from the business characteristics of the legal profession.

So I thought you were going to have an economic administration. When the petition came in, the accounting, the court was impressed that the attorney for the Receiver rendered every possible service. I could see no purpose, for instance, in going to the bank with a client to open a bank [651] account, particularly where the client had accounting experience, was an established businessman, had been a controller of corporations, and perfectly capable of opening a bank account without the presence of an attorney, or more than the most casual legal advice on it.

It seemed to me that the legal services had been rendered, no doubt, to the number of hours claimed, but to a greater excess than the requirements of the case were.

I at one time acted as attorney in Los Angeles for a corporation which had many properties in this locality, which it had foreclosed upon during the depression days. And I recall, although their business was property management—they had many apartment house managers around Los Angeles—that the requirements of their resident attorney, under corporate management, were such as to not require a terrific amount of time or to require all the services that are set forth here.

The court was disappointed, too, to have a tele-

phone call, I think, from Mr. Enright—someone from his office—after we had had our conversation here on, I think it was, November 30th, in which the court had indicated that an order should be prepared for the appointment of Mr. Hallberg as Receiver, and Mr. Hallberg should then qualify, and we fixed the bond.

Then I had a call from Mr. Enright or someone in his [652] office to the effect that Mr. Hallberg was out collecting rents and demanding things of apartment house managers, exercising the active duties of a Receiver, and had a lawyer with him, which it turned out was Mr. Whyte.

The court had not signed any order. The proceedings started as a *de facto* receivership, without the *de jure* qualifications.

The Receiver had not taken the oath required of receivers, had not posted the bond required of receivers, had not been appointed by a formal order required to appoint a receiver.

The quality of the legal advice to a man to go forth and embark upon the actual administration before he was qualified legally to do so was not a quality of advice that I am sure you generally hand out, Mr. Whyte, because you are known for being associated with cases of considerable magnitude in these courts.

I had some qualms when Mr. Hallberg told me he wanted you as his attorney, because I felt that, living up there in the ivory towers with O'Melveny & Myers all these years, your taste would be pretty rich for fees. You are accustomed to a pretty high

standard of compensation. And I had in mind that you would get something more nearly like I got when I worked for a corporation, where my fees were fixed by a hard-headed board of directors, or, rather, my bills were approved by them, and sometimes the bills were reduced simply because [653] they weren't willing to pay the amount asked for the services which had been rendered.

Then we proceeded in a rather relaxed, it seemed to me, course here, in which the time was spent without all of it being required. You came in and fought for the justification of the Receiver's administration, when the administration was under fire.

The court found it had been a good administration. Perhaps I was not as liberal as I should have been in awarding you fees for representing Mr. Hallberg during those rather trying days in court, where his every act, from the time that he did similar work, although upon a different legal basis in Chicago some twenty years ago, down to the very moment he was on the witness stand, that I think perhaps I was a little too conservative in the fees.

We have out in this courtroom a little placard on each of the tables which I modeled after the one in Judge Mathes' courtroom, which he in turn modeled after the one in Judge Jenney's courtroom. I don't know where Judge Jenney bought it. Various judges around here use it. It requires counsel to perform their duties in the courtroom in certain ways, some of which are merely etiquette and some of them are suggested by the acoustical efficiency in the building.

For instance, you are supposed to stand at the lectern when you ask questions. I don't think you stood there once, [654] except when you made argument. You lolled around the courtroom in your chair, without any disrespect to the justice courts, as if this were a justice court. The justice courts proceed in a relaxed sort of in-chambers fashion; the federal courts do not.

So we began with an unlawful, improper administration, which the appointment of an attorney for the Receiver is the very thing the attorney is supposed to see doesn't happen, because these receivers are busy men and they are not acquainted, unless they are often receivers, and Mr. Hallberg has not been often a receiver, or if ever an actual receiver before, and I understand from him that if his experience in this case is an example of it that he doesn't want to be one again, because of the criticism and acrimony which attends being a receiver in situations which grow out of family unpleasantness, such as we had here, where litigants have the temperament that was expressed in some places here.

If you had administered an estate in probate in California and the corpus of the estate were the amount of money which was handled by Mr. Richman,—I don't mean the value of the fee of the property, because Mr. Hallberg was essentially a property manager—but if you had administered an estate which handled the amount of money Hallberg handled as Receiver you would have received \$1,770.00.

Of course, you probably think that doesn't apply because [655] the total value of fee of the various properties involved was over a million dollars.

Now, since all of these things have been considered and with the time the court has now had to reflect upon it, I think I was a little low so far as you are concerned. I think I was, to put it colloquially, right on the button so far as Hallberg was concerned.

I will reconsider the fees for the attorney informally, without the necessity of further petition. We don't want to run the fees up any more than they are now. But now, let's start out.

Mr. Richman, if you want to get in this—you are a lawyer and you have had a lot of experience and you don't have to answer me if you don't want to—but my idea is to start with you, just because you are at the right of the room, and proceed across to Mr. Whyte, who is most perhaps directly interested, except you, and find out what you think these fees ought to be.

Do you want to express yourself, Mr. Richman? I don't mean in great detail as to why, but just give me a figure of what you would consider a fair fee for the attorney, and then Mr. Enright and then Mr. Camusi and finally Mr. Whyte.

Mr. Richman: Any statement I would make would be biased by the evidence and my knowledge of the thing. The evidence was presented to the court. Your Honor decided one way on it, [656] or evidently has decided one way, and my views are

the other on it. I refer primarily to the smog matter, the mess——

The Court: I took that into consideration. Hallberg was delinquent in that; so were you.

If Hallberg had been fully advised legally, I don't think he would have been delinquent.

Mr. Richman: I think that an attorney should be responsible for his misdeeds as well as his deeds. He made himself a lot of work there and created a great deal of embarrassment to me in being charged criminally with violation. There was no reason for it.

Under the circumstances, I feel that what he did wasn't done properly and caused himself a lot more work and also brought on a lot of discredit to other individuals on that.

I think he has been paid amply for the services he rendered, the type of services he rendered.

The Court: What do you think of it, Mr. Enright? [657] * * * * *

Mr. Whyte: May I say one word today, so I won't forget it tomorrow. I felt rather badly when the court made the observation a moment ago I lolled about the courtroom and until the final argument I never stood at the appropriate place in addressing the witness.

I want the record to show that the court's bailiff came to me on, I believe, the second day of the hearing. I think I had violated the court's placard with respect to standing and addressing the——

The Court: Excuse me just a moment. Another

judge has a question which he says is somewhat urgent. I will call him.

I don't mean what you are saying isn't important, but when a judge says it is urgent, I like to respect him. (Short recess taken.)

The Court: The last comment I had was that I was too easy on them.

Mr. Whyte: The first day of the hearing I recall I did overlook the instructions on the counsel table with reference to standing at a particular place when addressing the witness. [659]

The second day of the hearing the court's bailiff came to me and called my attention to the rule, whereupon for the rest of the hearing I recall distinctly I stood at the end of the jury box, which was one of the few places he pointed out to me as being a proper place to stand.

The Court: Well, I am sorry then, Mr. Whyte. I remembered your misfeasance and forgot your compliance. I simply mentioned it to indicate that at the very beginning, when the man should have taken his oath and been bonded, after having been appointed upon a written order, he went forth unlawfully and at the very conclusion the attorney was not standing by the courtroom rules, both of which acts I attributed to a lack of your usual diligence. I know you are generally pretty sharp on these things.

But it seemed to me you had missed somewhat your usual acute attention to detail in this particular representation.

Mr. Whyte: One other comment I should like to make——

Mr. Enright: I would like to make a comment.

The Court: You can make all the comments you want to.

Mr. Enright: I prefer to proceed then.

The Court: Let me go in the courtroom for a few minutes and I will excuse the people until 11:00, and then we will proceed. (Short recess taken.)

The Court: You take as much time as is reasonably necessary [660] to present your position.

Mr. Whyte: Could I correct one statement on the record before Mr. Enright begins, if I may?

The Court: Surely.

Mr. Whyte: This is the first time that I have received the intimation that I am to blame for the alleged dereliction of duty of Receiver in connection with the Smog Control citation.

The court will recollect the testimony that Mr. Hallberg submitted the contracts made by Mr. Richman with the smog installation people to me on the day before Christmas.

I took them home with me and advised him shortly after Christmas that he was bound by the contracts and to go ahead and perform them.

Mr. Hallberg testified that on or about the 2nd of January he instructed his bookkeeper to mail the plans and specifications to Oxyaire, which was I think the name of the installation corporation.

The bookkeeper didn't do it for one reason or another, and then on the 15th or 16th of January Mr. Hallberg received a warning notice. That no-

tice was never called to my attention, as Mr. Hallberg himself testified in court.

I knew nothing whatever about the impending danger of the County Smog Control authorities cracking down until the 29th or 30th of January, when the formal citation was received. [661] That was the first information related to me by Mr. Hallberg that he was in danger of being cited by the county or city authorities. The warning notice was never referred to me, and I had advised the Receiver in December that he was bound by the contracts and to go ahead and perform. That is all I had to say, your Honor. [662] * * * * *

The Court: The court told him—that is one of the conferences I think specified in the petition—that it felt it would be better to make quarterly reports.

At that time I was in full expectation of an appeal from the principal judgment, and in the interest of economy and considering the simplicity actually of the administration of those apartment houses, I thought that quarterly report would be adequate. The Rules contemplate there may be exceptions; at least, the court thought they did. And some of the other judges, who had experience in these matters far beyond mine, think they do. [664]

So if there is fault there it is the fault of the court. It is not the fault of either Mr. Hallberg or Mr. Whyte, that there wasn't an accounting at the end of the month. [665] * * * * *

The Court: Well, I don't consider the payment on the 27th as an imprudent thing, for a person

owing a bill, due on the 1st, do you? Don't you sometimes pay your bills a day or two ahead of time?

Mr. Enright: Ordinarily sometimes, yes; nothing unusual about that. This was different, your Honor. Here an order was made on the 26th.

The Court: What was the order on the 26th?

Mr. Enright: That the Receiver discontinue his active management and only collect the moneys up to the 28th and retain the money in the bank and the cash under his control.

The Court: Of course, there might be many considerations there. A receiver administering a property on which there is a deed of trust, which was amortized over a period of time, about to surrender it to a new owner, not a person who didn't have any prior interest, but a person who is assuming the [669] duty of management, control of it for the first time, might feel that it would be an act of prudence to put it in condition so that the person could have a little time to orient themselves to the ownership and its obligations before the payment commenced to fall due. He was only giving her 33 days. It was a type of thing the court could, unless I committed error in the memorandum, which also contains this attorney's fee fixing, that the court could adjust that by requiring that the person for whose benefit it was paid bear the burden, and I think Mr. Camusi conceded that in court at the hearing.

Mr. Enright: Oh, yes.

The Court: It was just sort of a matter of ex-

pediency of the legalities and equities which were susceptible of adjustment and were adjusted by the court in very little time. I could conceive of someone in almost every one of the big law firms in Los Angeles advising a receiver, under those circumstances, to pay that money. [670] * * * * *

The Court: You think it is a little low?

Mr. Camusi: I would say this: If he has put in this number of hours and if it all was devoted to matters that are clearly within the scope of his duties as attorney for the Receiver, I would have to say it was low or I would be dishonest about it.

* * * * * [680]

Mr. Camusi: I would like to make one more comment for the record. It always seems that any time anything comes up, why, the plaintiff and defendant attorneys are not in agreement, even though it involves a third party.

I don't know Mr. Whyte personally and I am not making statements which are obviously contrary to Mr. Enright's ideas because I want to be contrary to Mr. Enright, because I don't. I wish I could be more in agreement with them at this time, but I just feel that we came into court and we asked for a receiver. It was very important to our position.

We asked for a receiver. He has to have an attorney, and if we are going to not be fair at this stage of the game, when it comes to fixing a fee, I feel it just may hurt me personally in the future in trying to get any attorney interested in taking a job that may be of ultimate benefit to my client.

I think we are very satisfied with the final result in our case and now we have gotten what we want—I figured what we got we were entitled to—I think we would be less than fair if I came in here at this stage of the game and said I thought the fees were reasonable, when I thought they were not.

[Endorsed]: Filed March 1, 1955.

[Title of District Court and Cause.]

DEPOSITION OF ROY E. HALLBERG

Taken at Los Angeles, California, April 22, 1954,
before Kathryn A. Kirby, Notary Public.

* * * * *

ROY E. HALLBERG

having been first duly sworn, deposed and testified
as follows:

Direct Examination

By Mr. Enright:

Q. Mr. Hallberg, you have not designated in the petition filed in your behalf the amount of fees you seek for your services as receiver?

A. That is correct.

Q. Have you determined in your own mind what compensation, that is, the amount of dollars, you would desire to receive?

A. No. I have left that up to the court.

Q. I see. Will you state for the record your address?

A. 1202 Seaview.

Q. That is your residence address?

A. Residence.

(Deposition of Roy E. Hallberg.)

Q. What is your business address?

A. The same address.

Q. Do you use any other address for business purposes or—— A. Not now.

Q. ——otherwise?

Mr. Enright: What answer do you have, Miss Reporter? [3*]

(The answer was read by the reporter.)

Mr. Enright: Q. Have you had a business address at some time in the past? A. Oh, yes.

Q. Would you state what the business address was?

A. Well, I had—do you remember the one up on Foothill Boulevard?

Mrs. Hallberg: I think it's 18 something.

The Witness: I think it was 1835 Foothill Boulevard. I think that's what it was.

Mr. Whyte: Speak up just a little bit, please, Roy.

The Witness: Yes.

Mr. Enright: Q. When did you have that address at 1835, or approximately 1835 Colorado in Pasadena?

A. Oh, about two years ago. I have most of my business correspondence directed to my home, wherever I have lived.

Q. What was the nature of the business you conducted at this address on Colorado?

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

(Deposition of Roy E. Hallberg.)

A. That was Morgan Construction Tooth Company.

Q. Morgan Construction Tooth Company?

A. Yes.

Q. How long did you engage yourself at that address for the Morgan Construction Tooth Company? A. Oh, about six months. * * * * * [4]

Mr. Enright: Q. What was the nature of that business?

A. Construction equipment. That was a manufacturing company.

Q. What did the company manufacture?

A. Replacement parts for construction equipment.

Q. What parts?

A. It was the tooth, if you are familiar with heavy earth moving equipment.

Q. I am quite familiar with it. A. Yes.

Q. Will you explain in what respect did this company manufacture parts for heavy earth moving equipment?

A. Well, they manufactured replaceable teeth.

Q. To be replaced on boom shovels, for example?

A. On power shovels, rippers, things like that.

Q. What was your association or status with that company? A. I was vice-president.

Q. What were your duties?

A. General manager.

Q. For what period of time?

A. About six, seven months.

(Deposition of Roy E. Hallberg.)

Q. What was the year? You have stated approximately two years ago.

A. Do you happen to know? [5]

Mrs. Hallberg: Maybe Mr. Whyte could help you with that.

Mr. Whyte: Can you tell us approximately, Mr. Hallberg?

The Witness: Well, I am trying to think. It was in 1951.

The Witness: '51. Are you looking for a chronological employment record, or something like that?

Mr. Enright: Q. Yes, that would be appreciated. If you want to state that, I'd appreciate that.
* * * * * [6]

Mr. Enright: Q. Would you state your employment record during the past 10 years, Mr. Hallberg. A. The past 10 years?

Q. Yes, approximately.

A. All right. The Garrett Company, Brooklyn, New York.

Q. From——

A. Well, I was with them for 13 years, I believe.

Q. When did you leave them?

A. Left them as of January 1, 1947.

Mr. Enright: Q. Yes, sir.

A. And came out here.

Mrs. Hallberg: He would like to know your average earnings there.

The Witness: Would you like to know my average earnings?

Mr. Enright: Q. Perfectly all right, yes.

(Deposition of Roy E. Hallberg.)

A. About \$40,000 a year.

Q. \$40,000 a year?

A. That's what I was earning when I left. [8]

Q. Well, now, you have stated that you were with Garrett Company 13 years—— A. Yes.

Q. ——and you left Garrett Company in 1948?

A. Yes, I came out here for Refrigeration Corporation of America.

Q. Yes.

A. As Western Regional Sales Manager at \$10,000 a year, plus an override, which was based on volume. And shortly after, think I had been with them a year——

Mrs. Hallberg: About a year and a half or two years.

The Witness: That's closer to it, about two years.

Mr. Enright: Q. Did you——

A. They ran into—they got into financial trouble back east, and they wanted——

Mrs. Hallberg: Company dissolved.

The Witness: Yes, that was part of the parent company. The parent company was Noma Electric.

Mr. Enright: Q. How would you spell that?

A. N-o-m-a. They dissolved the company, and the assets were sold about a year later.

Q. They dissolved which company, Refrigeration Corporation of America?

A. Correct, that's the one. And it wasn't too long after that where I began to have trouble with my back, so my employment record there is a little confusing from that [9] point on, because I had to

(Deposition of Roy E. Hallberg.)

go to the hospital and I was out of circulation quite a bit of the time.

Q. Yes. Well, now, just to space it here a little bit, the year and a half to two years with Refrigeration Corporation of America, that would commence early in 1948, is that right?

A. It commenced in January, 1947.

Q. And terminated—— A. In October, 1948.

Q. ——in what year? A. October, 1948.

Q. About 1950? Then you had difficulty with your back? A. That's right.

Mrs. Hallberg: You were still tied up, weren't you?

The Witness: Well, yes, I have still got a tie-up there with the company that I have an interest in in Warrenton, Missouri. I was doing some special work for them?

Mr. Enright: Q. When was it? What's the name?

A. That was right immediately following that.

Q. Following what, Mr. Hallberg?

Mrs. Hallberg: October, 1948.

The Witness: October, 1948. [10]

Mr. Enright: Q. Miss Cosgrove or Mrs. Hallberg stated November, 1950. Is that right?

Mrs. Hallberg: No, October, 1948.

Mr. Enright: Q. What is the name?

A. Binkley Manufacturing Company, Warrenton, Missouri.

Q. Yes, and you still are associated with that company?

(Deposition of Roy E. Hallberg.)

A. Oh, yes. Yes. Let's put it this way: I have an interest in the company.

Q. That is a corporation, I take it?

A. It's a corporation.

Q. In what state? A. Missouri.

Q. Missouri corporation? A. Yes.

Q. I assume that that's part time?

A. I have done special work for Binkley from time to time, yes.

Q. Then after the Binkley Manufacturing Company, next is the Morgan Construction Tooth?

A. That's right.

Q. You previously stated, I believe, it was about six months with Morgan Construction Tooth?

A. Yes.

Q. That is what year? [11]

A. In 1951, last half.

Mrs. Hallberg: '1, I think, isn't it?

The Witness: 1951, I am quite sure.

Mr. Enright: Q. 1952? A. No.

Q. And Mrs. Hallberg thought possibly 1951?

What employment have you had since Morgan Construction Tooth in 1951 and 1952?

A. Oh, I did some special work for Narmco.

Q. How do you spell that? A. N-a-r-m-c-o.

Q. N-a-r-m-c-o, yes.

A. Down at Costa Mesa.

Q. Costa Mesa? A. Yes.

Q. Any other concern that you have been employed by?

(Deposition of Roy E. Hallberg.)

A. No, just special assignments I was doing for them.

Q. For whom?

A. I said these companies, like Narmco.

Q. How long were you employed by Narmco?

A. About a year, I think.

Q. What year would that be?

Mrs. Hallberg: September of '52 to October '53.

The Witness: September—thank you. [12]

Mr. Enright: Q. September '52 to October '53?

A. '53, yes. * * * * * [13]

Mr. Enright: Q. But you are one-fourth owner of the Morgan Construction? [18]

A. That's right.

Q. Now, you stated you were general manager, is that correct, of Morgan Construction?

A. That is right.

Q. What did your duties consist of, as general manager?

A. Oh, all the office procedure, running the salesmen, doing some sales work, and lining up production.

Q. Now, under office procedure, would that be keeping the books?

A. I helped on that, yes.

Q. Will you explain what you mean by "you helped on it"?

A. Well, we had a public accountant in there that was setting them up, and I did quite a bit of the bookkeeping work to keep it current.

(Deposition of Roy E. Hallberg.)

Q. That would be making the entries of expenditures of money and—— A. Oh, yes.

Q. How about receipts of money, would you make them? A. That's right. * * * * * [19]

Mr. Enright: Q. What has been your connection with the Binkley Manufacturing Company?

A. I am a stockholder in it.

Q. Over what period of time?

A. Oh, since 1936, I believe.

Q. Other than being a stockholder, have you been an employee on a full time basis at any time?

A. Since October, 1948, and after August, 1949 I was president of the subsidiary known as Hall Industries.

Q. That is a corporation?

A. It is a corporation, yes.

Q. In what state is it a corporation?

A. Missouri.

Q. Well now, I assume from what you said that you were an employee of the Hall Industries but not an employee of Binkley Manufacturing Company; you are only a stockholder?

A. That is correct, after the subsidiary was formed.

Q. Yes.

A. Hall Industries was a sales organization for some of the products——

Q. For some?

A. ——manufactured by Binkley Manufacturing Company.

(Deposition of Roy E. Hallberg.)

Q. Now, which products did Hall Industries sell for Binkley Manufacturing Company?

A. Traverse track and other products.

Q. Traverse track curtain rods. Any other item that they made?

A. Well, that was the main product at that time.

Q. I am not informed at all on curtain rods. Would you mind telling me, are they for residential or for income property—

A. Residential— [23]

Q. —Or what?

A. Residential, income property, apartments, homes, everything, every place where they want to decorate and to curtain a window so that the curtains can be drawn away from the windows.

Q. Now, such rods are not sold direct to the residents, are they? How are they marketed, or how did Hall Industries market these rods?

A. They were marketed through distributors set up in various parts of the country from coast to coast.

Q. Oh, and Hall Industries has set up these distributors, is that it? A. That is correct.

Q. Now, where is the place of business of this Hall Industries?

A. Warrenton, Missouri.

Q. That's a corporation?

A. That's right.

Q. What address?

A. Warrenton, Missouri.

Q. Oh, it's a small town?

(Deposition of Roy E. Hallberg.)

A. Very, very small. Binkley is the major industry.

Q. What was your rate of compensation as an employee of Hall Industries?

A. I think I was working there at the rate of about——

Mrs. Hallberg: Before income tax, about \$20,000 a year [24] on that.

The Witness: Yes, that's what I was going to say, about \$20,000 a year.

Mr. Enright: Q. Over, or during what years?

A. October, 1948 to April, 1951.

* * * * * [25]

Q. Now, do you have any particular office hours during the week as an employee of the County of Orange? A. No.

Q. Are you required to report at any time on any day of any week? A. No.

Q. Will you state how many days during the month of December you worked for the County of Orange; that is, December 1953?

Mr. Whyte: Objected to as having already been asked and answered. The witness testified very few.

Mr. Enright: Q. Do you have a desk as an employee of the County of Orange? A. No.

Q. Do you have a telephone extension number?

A. No. * * * * * [36]

Mr. Enright: Q. Now, will you state, Mr. Hallberg, what real property of any kind or nature you have managed or owned or had experience with

(Deposition of Roy E. Hallberg.)

in Southern California during the last two or three years?

A. A 16-unit furnished apartment building in South Pasadena.

Q. Would you give us the address?

A. It's 1509 South Fair Oaks.

Mrs. Hallberg: That's South Pasadena. [38]

The Witness: And that's South Pasadena.

Mr. Enright: Q. Any other apartment buildings or——

A. Yes, I have one at 507 South El Molino.

Mr. Whyte: Is that Pasadena, Mr. Hallberg?

The Witness: That is Pasadena.

Mr. Enright: Q. Any others?

A. Only our own buildings up there.

Q. Where are they?

A. Well, those are homes.

Q. What addresses?

A. 85 Glen Summer, 90 Glen Summer; built both of them ourselves.

Q. You mean those are new residences that you built? A. Yes, that's right.

Q. Any other real property that you have had experience with or managed or were in any way connected with in Southern California?

Mrs. Hallberg: 1202; 218 Fernleaf; 218 Fernleaf, and 1202 Seaview.

The Witness: Well, 1202 Seaview was the——

Mrs. Hallberg: Three unit.

The Witness: Three units there. We built there.

Mr. Enright: Q. Now, you have enumerated

(Deposition of Roy E. Hallberg.)

five different parcels of real property. Any others?

A. Yes. In California, no. Oh, there is 218 Fernleaf. That's a house I built and sold. [39]

Mr. Whyte: In what city, Mr. Hallberg?

The Witness: Corona Del Mar.

Mr. Enright: Q. Now, have you participated in any manner in the management or operation of any real properties or improvements upon real properties other than these six that you enumerated here? A. In California?

Q. Yes. A. No.

Q. Had you had any experience with any other real properties other than these six that you have enumerated here in California?

A. No, not in California.

Q. Have you had experience with real property in any other State? A. Yes.

Q. What real property?

A. In New York.

Q. What addresses?

The Witness: 10 Rock Ridge Road, that's what it is.

Mr. Enright: Q. Spell that, please.

A. R-o-c-k R-i-d-g-e R-o-a-d. [40]

Q. What city?

A. Larchmont, New York.

Q. Any others?

A. Yes. My own building in Chicago, 3627 North Jansen.

Mr. Enright: May I have that answer read?
(The answer was read by the reporter.)

(Deposition of Roy E. Hallberg.)

Mr. Enright: Q. Any others?

A. Yes. There are quite a few others that were managed during a period of receiverships coming out of the insolvency of the Citizen's State Bank in Chicago—yes, in Chicago—which was located at Lincoln Avenue near Belmont.

Q. That is the bank was located that way?

A. Yes.

Q. When was it this receivership occurred?

A. That went into receivership, oh, during 1931, I believe, or '31 to '32. You are asking me to go back a long way now.

Q. For what duration of time were you connected with that receivership?

A. About a year, or more.

Q. In what capacity?

A. I was managing the buildings there.

Q. How many buildings?

A. Oh, some 40 or 50. [41]

Q. Were they different types of buildings?

A. All different types, from residences up to large apartment buildings.

Q. What would you define as a large apartment building?

A. Well, there's one hotel apartment there that had about 60 apartments in it.

Q. What is the name of the hotel?

A. Oh——

Q. That's the largest, I take it, is that correct?

A. Well, they—the incomes varied on these

(Deposition of Roy E. Hallberg.)

buildings, depending upon the nature of the building.

Q. Well, I will hold my question to unit-wise. Was it the largest?

A. In units, yes, I think.

Q. Was this 60 unit hotel?

A. Yes. That was apartment hotel.

Q. Apartment hotel? A. Yes.

Q. What is the name of that?

A. I can't give you the name of it.

Q. The location?

A. Location is on North Oakley right near Logan Square.

Q. Were you the receiver for this Citizen's State Bank? [42] A. No.

Q. Were you an employee of the receiver?

A. No, not of that.

Q. Well, who employed you to—

A. It was a trust that was set up by the sale of a dairy, the Eich Dairy, and Mr. Gus Eich had his money from that trust invested in these real estate bonds, and upon default we took over the management of these various properties.

Q. Who is "we"?

A. I was working with Mr. Eich.

Q. I see. Well, then, who was the receiver?

A. On those particular—Mr. Eich was on several of them. There were other people involved who were appointed receiver. We ran those buildings for them.

(Deposition of Roy E. Hallberg.)

Q. Will you explain further what you mean by the word "we"?

A. Well, Mr. Eich, who was still in the dairy business, was made receiver on several of these buildings. Now, I at the time had been working for Walter Larsen, a real estate operator, and got acquainted with Mr. Eich through one of his buildings, which we took over to manage; that is, Walter Larsen did, and I was running the building for him, and I got acquainted with Mr. Eich that way, and when these buildings came in, we set up our own operation of these various buildings. I was directly in charge of all of them. [43]

Q. How many in number now that Eich had?

A. It was about 40 or 50 buildings. I can't give the exact number.

Q. And the largest was this 60 unit apartment so far as—

A. That's right. It may have been larger, I don't recall.

Q. —units are concerned? A. Yes.

Q. The other were industrial to residential and all various different types?

A. There weren't any industrial. It was all residential, either in apartments or apartment hotels or individual residences.

Q. You were employed there a period of one year? A. Approximately, yes.

* * * * * [44]

Q. What university did you go to?

A. Northwestern.

(Deposition of Roy E. Hallberg.)

Q. Did you receive a degree?

A. Yes, Bachelor of Science in Commerce.

Q. Bachelor of Science in Commerce. What year? A. 1927. * * * * * [45]

Mr. Enright: Q. Oh, you moved from New York directly to this 90 Glen Summer? [48]

A. Pretty close, yes. That covers it pretty well, with the intervening period there of a couple months before we decided to move in there. We had—it takes time to build a house. That was a brand new house we built.

Q. That's 90 Glen Summer Road?

A. 90 Glen Summer Road.

Q. Now, you gave me an address of eighty——

A. 85 Glen Summer Road.

Q. Was that another——

A. That is another house we built. Actually, the 85 Glen Summer Road is where we moved first. We moved—built the house across the street then, and moved across the street.

Q. What do you mean by “across the street”? 90 was across the street from 85? A. Yes.

Q. So you built a house at 85 Glen Summer Road when coming from New York——

A. That is correct.

Q. ——and then having completed building it, then you started building another house across the street? A. Correct.

Q. And you moved out of the 85 Glen Summer Road into the new house at 90 Glen Summer Road?

A. That is right.

(Deposition of Roy E. Hallberg.)

Q. Both were residences? [49]

A. Correct.

Q. Then where did you move to?

A. Moved to 1202 Seaview, Corona Del Mar.

Q. That is a residence?

A. No, that's three apartments there.

Q. Three apartments? A. Yes.

Q. Did you build that new? A. Yes.

Q. Now, when did you move there?

A. About a year and a half ago.

Q. Two apartments, I take it, are rented?

A. Yes.

Q. So you are engaging in the rental of those properties—— A. That's right.

Q. ——at Seaview, two additional apartments?

A. (The witness nods his head up and down.)

Q. Now, what's this 218 Fernleaf? Is that a new property, or—— A. That is.

Q. ——property you built?

A. I built it.

Q. When did you build that?

A. Oh, during the last summer.

Q. Can you state approximately when it was completed [50] with reference to your taking over your duties as receiver?

A. That was completed before.

Q. How long before?

Mrs. Hallberg: It was finished in September.

The Witness: September.

Mr. Enright: Q. Is that a single residence?

A. That's a residence.

(Deposition of Roy E. Hallberg.)

Q. The first property you referred to was Pasadena apartment building at 1509 South Fair Oaks?

A. Yes, South Pasadena.

Q. First, what is the name of the apartment house?

A. I don't know what it is now. They have changed it.

Mrs. Hallberg: I think it's still the Mira Monte.

The Witness: Mira Monte.

Mrs. Hallberg: That's what it was then.

Mr. Enright: Q. When did you acquire that? Well, I will put it this way: How long did you operate that apartment property?

A. About a year.

Mrs. Hallberg: Oh, a year and a quarter, about.

The Witness: About a year and a quarter.

Mr. Enright: Q. Did you personally operate it?

A. Definitely.

Q. How many apartments were there in it?

Mrs. Hallberg: 16. [51]

The Witness: 16 on that one.

Mr. Enright: Q. How many were——

Mrs. Hallberg: Furnished.

The Witness: All furnished.

Mr. Enright: Q. What year was it that you operated, or year and a quarter, that you operated?

Mrs. Hallberg: End of '49.

The Witness: Yes—well, it's between 1949 and '50, in around there.

Mr. Enright: Q. Did you employ a manager?

A. We did most of that ourselves.

(Deposition of Roy E. Hallberg.)

Q. Who is included in "we"?

A. Well, when I wasn't there——

Mrs. Hallberg: There was a manager.

The Witness: Well, I was talking about the actual work over there. We had a manager living in there who collected the rents and notified us of the various things that were necessary which we took care of, ourselves.

Mr. Enright: Q. You were then living on 90 Glen Summer Road, yourselves? A. Yes.

Q. What is the name of the manager?

A. Mrs. Cosgrove.

Q. That is your mother-in-law? A. Yes.

(There was a brief interruption.) [52]

Mr. Enright: Q. I have asked you concerning 218 Greenleaf, Corona Del Mar.

A. That's Fernleaf.

Q. Fernleaf, pardon me, 1202 Seaview, 90 Glen Summer, 85 Glen Summer, and this 1509 South Fair Oaks. The only other property, real property, that you owned or participated in the management of, or were in any manner connected with, was 507 South El Molino? That is Southern California property?

A. That is Southern California property. Yes.

Q. Am I correct so far, that there is only one remaining property, that is 507 South El Molino?

A. That is the only property here in California.

Q. In California? A. Yes.

Q. What is the nature of the property at 507 South El Molino?

(Deposition of Roy E. Hallberg.)

A. Four apartments.

Q. When did you acquire those?

Mrs. Hallberg: I think it was January '51.

The Witness: January, '51.

Mr. Enright: Q. Do you still——

A. January, '51. Yes, I still own that.

* * * * * [53]

Mr. Enright: Q. Now, as to this salary of \$40,000 from Garrett Company, how many years did you receive that salary?

A. I didn't say it was salary.

Q. Salary and commissions or income,——

A. It was income.

Q. ——or compensation?

A. It was compensation. Oh, I guess it extended for a period of three or four——about four years.

Q. During what four years? [58]

A. Well, four years prior to the last, my termination there.

Q. When did you terminate your employment there? A. You got that.

Q. In 1947? A. January 1, 1947.

The Witness: No.

Mr. Enright: Q. Yes, what——

A. It was January 1, 1947.

The Witness: I am a little vague about the years back in there.

Mr. Enright: Q. Well, I am concerned about the \$40,000, is the reason I am asking you, Mr. Hallberg. A. Well, yes.

(Deposition of Roy E. Hallberg.)

Q. Now, you say you received \$40,000 over a period of three or four years, is that correct?

A. That's correct.

Q. How much of that was retained by you for your services? A. All of it.

Q. Did you pay any portion of it out to any of the salesmen or anyone working under you?

A. Well, I didn't give you the gross income on that. [59]

Q. Well, all I want——

A. I am just giving you the net income I had on that. I didn't pay anything out of that.

Q. And you received net income for your services in working for Garrett Company in the amount of \$40,000 for a period of three or four years——

A. Correct.

Q. ——ending in 1947 or 1948?

A. Let's put it as ending January 1, 1947.

Mrs. Hallberg: End of '47.

The Witness: January 1, 1947. * * * * * [60]

Q. Now, Mr. Hallberg, did you attend to the negotiating for the changing of the insurance?

A. I did.

Q. How much time did you expend in negotiating the insurance?

A. Quite a bit of time. I contacted the previous broker who handled the insurance. I also contacted the Liberty Mutual.

Q. How many conferences did you have with Liberty Mutual on the subject of insurance?

A. I had two or three long sessions.

(Deposition of Roy E. Hallberg.)

Q. Two or three, and how many with the former broker, Mr. Dulley?

A. Two of them, and I think we had several conversations over the telephone.

Q. Did you, yourself, personally, make a survey of [67] the rental rates in the vicinity of the Western Arms Apartments?

A. Yes. In conjunction with—Miss Cosgrove did several—made several investigations there, herself—

Q. Now, what did you do?

A. —to check that. I went in and talked to the managers to find out what I could rent apartments for, and inspected available apartments to determine comparability.

Q. And you, yourself did? A. Yes.

Q. What apartment houses did you go to?

A. Over around the Oliver Cromwell.

Mrs. Hallberg: No, Western—

The Witness: Well, I was over in the next block, and—

Mr. Enright: Q. Now you are over at the Oliver Cromwell. I asked you about the Western Arms.

A. Well, I mentioned the Oliver Cromwell.

Q. Well, I'd like to confine you, if I may—

A. The Western Arms, yes, I went around that neighborhood, looked at the various buildings. We—

Q. This is what you personally did, is that right?

(Deposition of Roy E. Hallberg.)

A. Yes. I drove around that entire neighborhood and checked the various buildings there and——

Q. How many apartment houses did you check in that vicinity?

A. There are very few of them right in that vicinity [68] there. The nearest one on Western is down the street about three blocks and it's the mixed building.

Q. You checked that one?

A. I checked that one.

Q. Now, what other building did you check?

A. Those are the ones right there.

Q. Those is a poor——

A. I am talking about the smaller buildings. Those are residences in the neighborhood, and I went down the street south about a block and a half and saw that big apartment building on the corner, which is a mixed building.

Q. That's a mixed apartment. That's the only apartment house you checked in that vicinity, isn't it, of the Western Arms?

A. That's right. No. Also the building one block directly West of the Western Arms which is very comparable.

Q. Now, did you personally make a survey of the apartments in the vicinity of the Oliver Cromwell?

A. Yes, I did that.

Q. How many apartments did you personally——

A. I went into many of them over there and just inquired about their schedules.

Q. Did you make any investigation as to the

(Deposition of Roy E. Hallberg.)

rates of rents in the vicinity of the Canterbury, the La Loma, or the third apartment house?

Mr. Whyte: Fountain Manor? [69]

Mr. Enright: Q. Fountain Manor.

A. Yes, I did. I checked those—some of those buildings up there and each one of them, just to get a general idea of the rentals that were being paid for apartments there.

Q. You personally did?

A. I did, definitely. * * * * * [70]

Mr. Enright: Q. Tell me what other did you do as receiver other than the insurance and surveying the rental rates in the vicinity of these five apartment houses?

A. I worked on the accounting record to change the arrangement so that the individual buildings would show up without too much difficulty. I had the files changed around so that we could find the bills whenever we wanted to. I changed the listing of the accounts payable in such a manner that they could be located per company and also when they were paid; the check numbers are right on the bills so they'd have a cross-index by numbers.

Q. Yes.

A. I checked Harrison several times on his accounting. I had to help him balance the cash on two occasions.

Q. Yes.

A. I had to have him rewrite one whole page because of having made errors in his additions and

(Deposition of Roy E. Hallberg.)

carrying his totals across. I assured myself that all moneys that came in were duly recorded.

Q. So far I think your enumeration here has been accounting records, by listing accounts payable, check Harrison a couple times. Now, that all pertains to accounting, doesn't it? [71]

A. Most of that does, yes. I also went into the various buildings and looked at the physical plants and checked the basements, type of equipment they had.

Mr. Whyte: I am going to remind the witness that he has a right to refresh his recollection whenever necessary for him to do so.

Mr. Enright: Q. Can you enumerate any other major item of service, such as accounting, insurance, surveying rent conditions and checking the buildings that you rendered while receiver?

A. Definitely.

Q. That took time, your time? Could you enumerate what they were?

A. At this point it's a little difficult to enumerate every little item, thing that was done.

Q. No, I just wanted the major items, not every little item yet, Mr. Hallberg.

A. Well, let me see. Up at Fountain Manor we had a problem there with a sink in the basement which required the services of a plumber and also the hot water heating system was causing leaks in various lines, and I had quite a session with Red Lilly, the plumber.

Q. You personally did? A. Yes.

(Deposition of Roy E. Hallberg.)

Q. Did you talk to any other plumber other than Red Lilly? [72]

A. That was the only one I talked to at the time.

Q. Well, I mean during the whole period of November—December? A. Yes.

Q. December through February?

A. Yes. I talked to a couple other plumbers, but Red Lilly seemed to be a very aggressive individual and he completed his work in a workman-like manner, was very clean; he knew what he was doing. And incidentally, Mr. Richman used him also, and I think he worked out all right.

Q. Any other services in a general nature that you can describe or identify, rather than describe in detail? We have got plumbing now.

A. I had the problem on refrigeration.

Q. What apartment house was that?

A. Western Arms.

Q. Did you go to the Western Arms?

A. I was over there, yes.

Q. When? I don't mean the exact date, but I mean with reference to the problem.

A. The problem developed, and it was one of those conditions that caused immediate action. The managers were all notified what refrigeration to call if there had been any—if there was any—if there were any trouble, and the manager at Western Arms called the California [73] Refrigeration in.

(Deposition of Roy E. Hallberg.)

Q. Were you in Los Angeles on the day the problem arose?

A. On that particular day, I think I was. I wasn't on the job, though. Miss Cosgrove happened to be there at the time, and——

Q. So what you know about it is what Miss Cosgrove told you?

Mr. Whyte: Had you finished your answer, Mr. Hallberg?

Would you read back the witness' answer?

(The answer was read by the reporter.)

Mr. Enright: Q. Will you state what you know about what occurred there from your own eyes or from your having seen occurrences there? Did you see anything occur there at that time, yourself?

A. Are you looking at me, or Miss——

Q. You. I am interrogating you.

A. Your eyes—your glasses have a reflection, and I can't tell whether you are looking at me or at Miss Cosgrove here. I did not.

Mrs. Hallberg: You inspected.

The Witness: I did not go over there at that time. I got over there the next day and inspected it, and we called in another heating contractor, and he viewed the problem there. It was after the other California Refrigeration had let all the gas out of the system. [74]

Q. You were there and saw that, did you?

A. No, I was there the next day.

Q. The next day? A. Yes.

(Deposition of Roy E. Hallberg.)

Q. You saw all of the gas out of the system, didn't you?

Mrs. Hallberg: I was there, but they didn't tell me they were taking such a drastic step. One can't see gas in or out of the system.

Mr. Enright: Just a minute, if you please. If you want to go on the record, it's all right with me, Mrs. Hallberg.

Mrs. Hallberg: I'd just as soon.

Mr. Enright: Did you take it down, Miss Reporter?

(The record was read by the reporter.)

Mr. Whyte: Do you want to complete that answer?

Mrs. Hallberg: I would like to.

There was just one refrigeration unit out at the time, and I knew California Refrigeration had been called in. I was in the basement asking him about it, and he said he was getting along fine. That was at 4:30 in the afternoon.

At 6:00 o'clock he found Mrs. Kennedy in a guest's apartment having dinner, and informed her that he had let the gas out, and he later told me he had been letting it out all afternoon.

Mr. Enright: Does that complete it?

(Mrs. Hallberg nods her head up and down.)

Mr. Enright: Q. Now, Mr. Hallberg, other than this refrigeration and the plumbing problem and the accounting problem, the insurance and the survey of rentals, what other services did you render of a general nature that you can identify?

(Deposition of Roy E. Hallberg.)

A. We had that matter of parapet at the Canterbury.

Q. To whom did you talk or discuss that problem with?

A. I went up there and went up to the roof, checked the construction up there, and the roof apparently was in very good condition, and after seeing the roof and what was recommended, decided to contact the Building Department further, and as a result of the contact with the Building Department, a new recommendation was sent through by the Building Department which was not quite as involved as the first one was.

Their recommendation was not to interfere with the parapet directly over the entrance-way and to reinforce the parapet, which they suggested be left, which they would allow to be left, and to cut off the balance of the parapet.

Q. Do you know if—

A. Incidentally, I might mention here that I had no knowledge of any question on that parapet until about the middle of January when the files were sent to me by Mr. Richman. I thought I had had—I thought I had received all the files concerning the building, as ordered by the court, but Mr. Richman sent [76] me those afterwards.

Q. So your time was expended on the parapet wall problem after January, about the middle of January, 1954?

A. Some time after, that's right.

Q. Now, do you personally have any knowledge

(Deposition of Roy E. Hallberg.)

of any experience Miss Cosgrove had in the operation of apartments other than the real property that you owned here in California?

A. Well, let me give you a little of her background. She is a graduate of the University of Minnesota School of Business Administration. She majored in economics, and you minored in——

Mrs. Hallberg: In statistics and accounting.

The Witness: In statistics and accounting. She was in the investment field a good many years. In fact, she was one of two women investment counselors in New York.

Mr. Enright: Q. During what period of time?

Mrs. Hallberg: '37 to '42.

The Witness: It was prior to '42, and in her own right, she has carried through the decorating of a lot of our apartments and——

Mr. Whyte: By "our apartments," you mean those in Pasadena that you have mentioned?

The Witness: That we own, yes.

Mr. Enright: Q. That would be the El Molino, four [77] units, and the 16 units, is it, at the Fair Oaks?

A. Yes, and in New York and——

Q. Well, what apartments did you have in New York?

A. No, our own apartment in New York.

Q. Your own apartment, your residence she decorated, your home?

A. Yes. And——

Mr. Enright: Will you pardon me.

(There was a brief interruption.)

Mr. Enright: Q. Now, you were explaining, I

(Deposition of Roy E. Hallberg.)

believe, Mr. Hallberg, concerning Mrs. Hallberg's experience, and you stated she was a decorator in her own right. She had decorated your home in New York.

A. Pardon me, and homes out here, plus the fact that she has a broker's license.

Mr. Whyte: What kind of a broker's license?

The Witness: Real estate broker's license.

Mr. Enright: Q. In California?

A. In California.

Q. Well, from 1942 what was the nature of her employment, if any?

A. Well, she was with me, assisting me in a lot of my activities.

Q. Well then, as I understand it, the rental income property that she had experience with would be the El Molino, four units—— [78]

A. Yes.

Q. ——the Fair Oaks property,—how many units was that? A. 16.

Q. And the two units, or three units you had at Seaview? A. Yes.

Q. Are there any others?

A. Well, as I mentioned before, our building back in New York.

Q. That was your home, wasn't it?

A. Yes, that was our home. She did that.

Q. She decorated your home?

A. Yes, done the negotiation, and our speculative houses, she supervised the decorating of those.

(Deposition of Roy E. Hallberg.)

Q. Did you furnish these,—that would be the 85 and the 90 Glen Summer?

A. Yes, those were not furnished.

Q. They weren't furnished, were they?

A. Well, let's put it this way. When we sold the 85 Glen Summer Road, our furniture was in there. That was—she had done all the decorating there and the colors and color schemes and everything. When we sold the house, we moved across the street and we again decorated it and furnished it.

Q. She decorated and selected the colors for the various rooms? [79]

A. That is correct.

Q. The same for 218 Fernleaf, is it?

A. 218, the interior. That is not a furnished house. That's a speculative house. I might mention here that there was enough comment about our 1202 Seaview that we got quite a write-up in the local paper on it. That was—because of the decorating.

Q. She decorated the exterior too?

A. Well, that was harmony, colors harmonized with everything.

Q. Now, then, her experience is that of decorating these residences and——

A. Yes.

Q. ——and these units, 16 units and four units on El Molino and the Fair Oaks apartments, real estate broker, and a business counselor, is that it, investment counselor?

A. Investment counselor.

Q. That was during the period 1937 and 1942?
Mrs. Hallberg: Yes.

(Deposition of Roy E. Hallberg.)

Mr. Enright: Q. In New York City?

A. That is correct.

Q. What company was she associated with there, if you know?

Mrs. Hallberg: Johnston & Lagerquist.

Mr. Enright: Q. Do you know, Mr. Hallberg, whether [80] or not her investment counseling pertained to the management of apartment rental income properties or rental income of any kind.

A. I can't answer that.

Mrs. Hallberg: I had a couple of clients, Dr. Austin Flint and the Cox family for whom we handled properties. * * * * * [81]

Mr. Enright: Q. In other words, you checked each one of the bills before you——

A. I always requested the bill be right along with it.

Q. And you would check the bill against it before [88] you'd sign? A. Yes, sir.

Q. That was your method of checking up on whether or not an improper expenditure would be made?

A. The bill was supposed to have been checked, and you'd just naturally rely on somebody else to do the checking, the same as any bookkeeping office will do, or accounting office. They have to rely on some of the people they have working for them.

Q. Yes. So you relied upon Mr. Harrison to get them together, and Miss Findeisen when they were——

A. Yes, after my personal verification.

(Deposition of Roy E. Hallberg.)

Q. When they presented the bill and the check alongside of it, why, you quickly checked them, or did what is necessary so far as checking?

A. That's right.

Q. And signed it? A. That's right.

Q. So they, themselves, that is, Harrison and later Findeisen, would do the checking up on the expenditure that had been made for those materials or for the services that were rendered?

A. I attempted to keep a pretty close check on those bills to see that the check covered the amount.

Q. Well, generally, didn't you do your checking on the operation of these apartments on the week ends, [89] Mr. Hallberg?

A. I did some of that.

Q. I mean, that was the rule, wasn't it?

A. Not necessarily.

Q. You'd come in on week ends, Saturdays and Sundays?

A. Not necessarily. I came in during the week some evenings, as well as days. * * * * * [90]

Mr. Whyte: I note that my time slip for February 25 contains the following notation: "Telephone call from Camusi re termination of receivership by settlement between [95] Richman and Mrs. Tidwell. Telephone call to Hallberg reporting on this development and asking him to be present at conference in judge's chambers on February 26."

Mr. Enright: Now, I appreciate your notes show that; you examined them.

Q. Now, does that refresh your recollection of

(Deposition of Roy E. Hallberg.)

having received that phone call from Mr. Whyte, Mr. Hallberg?

A. Not as to the termination. It seems to me it was Friday night that we received the call.

Q. Where were you on Friday, or Thursday of that week, if you know?

A. I couldn't tell you now.

Q. But you did receive the telephone call either Thursday or Friday from Mr. Whyte?

A. Friday, some time Friday evening, I'm quite sure, but I am not positive of the exact time.

Q. At that time did Mr. Whyte inform you as to the results of the conference in Judge Tolin's chambers? A. Yes.

Q. Did he advise you of the stipulation in the court order that had been made that day?

A. I think, as I recall the conversation, it was summed up in the fact that he stated that receivership had been terminated and we were to act accordingly, and it was going to be taken over by Mr. Camusi and his client.

Q. You did not collect the rents during that period [96] Saturday, Sunday, and——

A. Well, there is a good reason for not collecting rents on Saturday, for the simple reason that——

Q. I appreciate that, Mr. Hallberg. I just want to know if you collected the rents.

A. No.

Mrs. Hallberg: Friday was the last.

(Deposition of Roy E. Hallberg.)

The Witness: Friday was the last time we collected rents. * * * * * [97]

Q. Now, what I am driving at is this, Mr. Hallberg: It's clear that you were up at the office in the Oliver Cromwell on the 27th or the 28th. At least, that's the date of the checks; that's what I am going by. That's a Saturday and a Sunday, is that right, Mr. Hallberg?

Mrs. Hallberg: Those were post-dated.

The Witness: Those were post-dated checks, I think.

Mr. Enright: Q. Well, you signed the checks after receiving this telephone message from Mr. Whyte? [98]

A. No, no. No, those were signed before, and as I understood from the court, that any payments that were due were to be made; any bills incurred were to be paid.

Q. Where were you when you obtained that understanding?

A. Mr. Whyte got that information—no, we got that in our call to Judge Tolin.

Mr. Whyte: Judge Tolin.

The Witness: Judge Tolin, and he instructed me to pay the bills that I had incurred——

Mr. Enright: Q. When was that?

A. ——had been incurred. I didn't hear what you said.

Q. I said, when was that? Mr. Whyte has furnished you with a calendar there.

A. Must have been Sunday, March 6.

(Deposition of Roy E. Hallberg.)

Q. That would be February 28? A. Yes.

Q. Did you talk to Judge Tolin at that time?

A. I did, and—Mr. Whyte who was at my home then talked to him.

Q. What were your instructions on February 28 concerning these—

A. Mr. Whyte got the instructions.

Q. What were you told to do by Judge Tolin?

A. To keep the moneys and to pay the bills that had been incurred during the month—during the receivership. * * * * * [99]

Q. Well now, the \$2,000 plus on the Oliver Cromwell wasn't payable till March 1st. You knew that, didn't you?

Mr. Whyte: Are you speaking about the payment on the trust deed now, Mr. Enright?

Mr. Enright: Yes, precisely. I'd like to know where we are going to come out on that \$2,000. I don't know why this man paid it out.

The Witness: You don't?

Mr. Enright: Q. No.

A. It's very simple. First of all, the interest that was included in that was for the month—that was the interest that was due, and that's due from the month preceding, and—

Mr. Whyte: Which month do you mean by "the month [102] preceding"?

The Witness: Well, the date—

Mrs. Hallberg: February.

The Witness: It's February. That was interest for the month of February, and you had a pre-

(Deposition of Roy E. Hallberg.)

payment for the balance which was to be paid on the 1st of March, if I remember correctly; and tried to get those in in time. It's normal process to get your checks in on time, especially when it comes to something like that. * * * * * [103]

Mr. Enright: Q. But you do think, your best recollection is that those instructions were given at the time these particular checks, including this Oliver Cromwell check for \$2,000—

A. No, that was sent out—made up in the normal course of business, that \$2,000 check was.

Q. And mailed out before the 28th?

A. Why, naturally.

Q. Oh, naturally it was?

A. Why, of course. Supposed to be in there, in the office, on the 1st.

Q. I see. Well it's dated the 27th here. It wasn't mailed before the 27th, was it?

A. It could have—it could have been the 27th or [104] the 28th, the 27th it was mailed out, but it's pretty hard to—

Q. Well now, really, Mr. Hallberg, will you step up here and examine these stubs here. You didn't mail checks out before the dates they bear on here, all the series of check starting with the number 425 dated the 28th and the payroll checks that go on after that?

A. Those went out Friday and Saturday, and as far as the dates on those two checks are concerned, why, it doesn't make an awful lot of difference whether you dated them the 27th or 28th.

(Deposition of Roy E. Hallberg.)

The dates you make out your check, you may not have sent it out that same day. * * * * * [105]

Mr. Enright: Q. Well, here you have a memorandum that may throw some light on this. Under your item—pardon me just a moment—page 7, 8A, it reads as follows: “On Friday, February 25—

A. Yes.

Q. —the reports of the three apartments, the Oliver Cromwell, the Fountain Manor, and the La Loma, were checked out.” A. Yes.

Q. “The Western Arms and the Canterbury managers reported that they had so much outstanding they would prefer to make the collections over the week end. It is not good business to make collections when the banks are closed. The apartment houses had safes for safekeeping the receipts, whereas the receiver’s office had none. The receiver was advised by his attorney to act in no capacity the morning of March 1st, Monday, and consequently the March 1st funds on hand could not be picked up. The receiver’s report mentioned this fact only in relation to the total receipts for February not being complete for comparative purposes.”

Now, is that the reason, as stated here, why you did not pick up the moneys from the two apartments on March 1st? [106] A. That’s right.

Q. I see, so it was upon advice of your attorney?

A. That’s right. * * * * * [107]

Cross Examination

By Mr. Whyte:

Q. Mr. Hallberg, I believe you testified upon

(Deposition of Roy E. Hallberg.)

examination by Mr. Enright that you had owned an apartment [115] building in South Pasadena consisting of 16 units and an apartment building on South El Molino in Pasadena consisting of four units, is that correct? A. Correct.

Q. What work, if any, did you or Mrs. Hallberg do in connection with those apartments?

A. You speak of work. You mean physical labor?

Q. Physical labor, management, decorating, painting—any type of work.

A. Well, that 1509 required complete renovating. We ripped up the carpets; we hung new doors on the garages; we repaired the roof; we repainted the hallways; we redid the apartments. We put in refrigerators. We put in new stoves.

Q. By "we" you mean yourself and Mrs. Hallberg? A. That's right.

Q. Go on.

A. Painted a lot of the apartments.

Mrs. Hallberg: All of them.

The Witness: Or painted all of the apartments, and by "painting" I got in and wielded a brush too, and laid floors. I did that.

Mr. Whyte: Q. What did you do in connection with the South El Molino property in Pasadena?

A. Well, we did practically the same thing there.

Mrs. Hallberg: Took the porches off. [116]

The Witness: Porches was taken off, the entire porch, and the entire front of that building changed.

Mr. Whyte: Q. What, if any, accounting training have you had?

(Deposition of Roy E. Hallberg.)

A. Well, I—while going to school, I did some public accounting work for an accountant in Chicago, J. L. Malby, and I did that part time.

Q. Did you take any accounting courses during your tenure at Northwestern University?

A. Naturally. Took two years of accounting.

Q. In connection with your duties surrounding this receivership, what if anything did you do with reference to the preparation for tax returns to be filed?

A. Which tax returns are you referring to?

Q. I am referring to the tax returns which were filed on or before March 15 of 1954.

A. Well, we filed a fiduciary return.

Q. What did you do in connection with that return?

A. Well, had to take the figures for the past year and combine them with the last month in order to make a complete return for the year.

Q. In connection with the preparation of that return, did you interview any employees of the Director of Internal Revenue?

Mrs. Hallberg: Yes.

The Witness: Yes, we contacted them, because of some [117] questions that we had about the filing of the return.

Mr. Whyte: Q. Again in connection with your active duties of management of the properties constituting the former Richman trust, what if anything did you do with regard to inspecting the Oliver Cromwell for defects either in the caulking

(Deposition of Roy E. Hallberg.)

of the apartment, or the exterior condition of the apartment building?

A. Well, after a heavy rainstorm we got quite a bit of rain in through the side, one side of the building, and water was coming in where the caulking had been giving away.

Q. Go on.

A. There was quite a few apartments that had water running down the walls and it spoiled some of the decoration there. Water also came in around the window panes where the putty was giving way.

Q. Anything further that you did toward inspecting or assessing, assaying that condition?

A. Well, at the moment it's pretty—can't recall any more on that other than calling in several contractors to give us bids on repair.

Q. Is that all, Mr. Hallberg, that you recall at this time? A. Yes.

Mr. Whyte: I have no further questions. [118]

Redirect Examination

By Mr. Enright:

Q. Mr. Hallberg, since doing part time accounting while attending Northwestern, you have not rendered services as an accountant to anyone, have you? A. Not as a public accountant.

Q. No, or any other accounting?

A. It seems to me it wasn't too long ago you asked me a question about Morgan Construction Tooth Company. I told you I was doing the work there.

(Deposition of Roy E. Hallberg.)

Q. Accounting at Morgan Construction Tooth?

A. Yes.

Q. Now that would be the only other accounting until you reached this Richman trust matter?

A. That's right, except that in every administrative job one deals with accounting records.

Q. In December?

A. Of course, I had to keep my own records for the various apartments, our own buildings. I kept those. * * * * * [119]

Q. Well, didn't you discuss these operating expenses with your attorney or Judge Tolin——

A. Oh, yes.

Q. ——or Mr. Camusi, or Mr. Yudall before you made out those checks or signed those checks of March 7? A. Yes.

Q. Well, now which one of the persons did you discuss it with?

A. I discussed that with Mr. Whyte.

Q. When, with reference to the time the checks were made out on March 7th?

A. Well, prior to the checks, I can't tell you the exact date.

Q. That was during that first week after you were relieved as——

A. Yes, that's right.

Q. ——as active receiver—— [123]

A. That's right.

Q. ——in charge of the property?

A. (The witness nods his head up and down.)

(Deposition of Roy E. Hallberg.)

Q. Did Mr. Whyte at that time tell you that Mr. Camusi wanted the bills paid?

A. I don't recall any such statement other than inasmuch as those bills were incurred under my operation of the buildings, they were more or less my responsibilities to have them paid.

Q. Well, who told you that?

A. Mr. Whyte.

Q. When did he tell you that?

A. Oh, in our discussions there right after the receivership ended.

Q. Was that before you talked to Judge Tolin on the Sunday evening after playing golf?

A. Yes, I think that was—it was confirmed by Judge Tolin.

Q. What do you mean by the use of the word "confirmed;" is that what he told you?

A. That's ostensibly the same thing in the conversation with Judge Tolin, and which Mr. Whyte received from him that night.

Q. Mr. Whyte didn't tell you what I said or I had told him, that the bills should not be paid; that the purchaser was going to pay the bills after February 28th? [124]

A. Yes, he mentioned your having a different opinion. * * * * *

Mr. Enright: Q. Now, Mr. Hallberg, you have handed me a book here bearing the heading on the top of the pages "Appointments and Memoranda," and there appears to be various pencil notations and ink notations commencing November 30. Directing

(Deposition of Roy E. Hallberg.)

your attention to the day of November 30, my question is: When was that entry written, on that or after that date?

A. Oh, I think this was written about a day or two later. [125]

Q. I see. Now, directing your attention to the notations appearing after December 1st, when was that written?

A. The same time, and some of the——

Q. You haven't answered my question. Well, go ahead and explain if you want to.

A. Yes, I was going to say that those are written at night after I got home, and I got the report from Mrs. Hallberg, and they are, speaking of all the notes throughout that book,—some of the information and data was taken from notes I had on backs of envelopes and activities that happened during the day that Miss Hallberg had, Mrs. Hallberg, and more or less compiled to get a general idea of what happened and transpired during that time.

Now, they, for the most part—those were written up almost every evening. Once in a while we did pick them up the next day or two days later.

Q. So, if I understand this correctly, for the most part the notations here that are entered in this book on these various different dates commencing November 30 and ending, I believe, February 26—is that correct?

A. 26 is correct, yes.

Q. For the most part, these notations appearing

(Deposition of Roy E. Hallberg.)

on those respective days were made in this book in the evening at your home, is that right? [126]

A. That's right.

Q. Yes, and they would be made after you had received a report from Mrs. Hallberg, is that right?

A. A good many of them would be. A lot of those entries in there are as a result of my activity.

Q. Yes.

A. But they were for the most part compiled after arriving home.

Q. Yes, after who would arrive home, you would arrive home, or Mrs. Hallberg?

A. Either myself and Mrs. Hallberg.

Q. In many instances you and Mrs. Hallberg would not be together during the day?

A. That is correct.

Q. And Mrs. Hallberg would be in Los Angeles attending to the problems relating to these different apartment houses?

A. Quite often.

Q. And in the evening when she would arrive at home, why, she would tell you what had occurred?

A. As for—we discussed the problems she had encountered during her visits to the various buildings, and we'd decide—we made a lot of decisions at night as to what to do.

Q. Now, the procedure was——

A. You see, actually most of that work again is [127] glorified housekeeping, and a woman's point of view is much better than a man's, and I don't think my housekeeping ability is any better than

(Deposition of Roy E. Hallberg.)

Richman's, but I certainly had somebody with me who knew——

Mr. Whyte: I think you have answered the question.

The Witness: All right, thank you.

Mr. Enright: Q. So, for the most part, it would be Mrs. Hallberg that would go around to the houses and ascertain what the problem was, and make the decision as to how the house should be kept, and then she'd report it to you in the evening, is that right?

A. Partially correct—I made decisions and visited the property involved when important problems were involved.

Q. Well, that's usually what occurred, isn't it?

A. No. I can't say it's usually.

Q. Now, during the day, usually you'd go to Santa Ana, isn't that right; that would be week days?

A. Some days; some days I wouldn't be in Santa Ana. You notice—in fact, I met you in town here during the week, so I did come in quite often during the week.

Q. Yes, you met me in town once at the Smog Board.

A. That's right.

Q. And at the time of the hearing on the Petition for the Renovation, is that correct?

A. That's correct.

Q. That's two times?

A. That's correct. In other words, I did come in [128] to town.

(Deposition of Roy E. Hallberg.)

Q. You did come in to town the day we met down at the City Prosecutor's Office?

A. That's right.

Q. And you did come in to town the day you testified on the Renovation Petition?

A. That is correct.

Q. Well, other than those two days, did you come in during the week that you can remember now?

A. Quite often.

Q. Now, these notations that you have written down here reflect your thinking and knowledge at the time that the events occurred, isn't that right? If that's not clear, I——

A. That's, I'd say fairly accurate, yes.

Q. Well, these notes were your best——

A. To the best of my——

Q. To the best of your ability, you wrote down what the problem was and what you had done during that particular day?

A. That is correct, uh-huh.

Q. So if we were to study these notes between now and the time of hearing, we could review and ascertain the problems that you were confronted with during your term as receiver?

A. Not all the problems. [129]

Q. Well, what problems didn't you write down that you can recollect now?

A. Well, there were minor problems about renting and decorating and questions concerning tenants — a lot of things that were discussed with managers and with people whom we employed, con-

(Deposition of Roy E. Hallberg.)

tracted with for services that aren't reflected in there.

Q. But those would be minor things. Any major item, or any major problem——

A. For the most part, the major things were entered. * * * * * [130]

Mr. Enright: Q. Now, Mr. Hallberg, you recollect, do you, verifying the Petition for Authority to Renovate [131] the various apartments?

A. Yes.

Q. You remember testifying in support of that petition, do you? A. Yes.

Q. Did you personally interview the managers concerning the vacancies that you testified concerning on the hearing of that Petition to Renovate, or did you obtain that information from Mrs. Hallberg?

A. Some of that information I obtained directly, and some through Mrs. Hallberg.

Q. Has Mrs. Hallberg been paid by you for her services in assisting you in this receivership?

A. Did you hear that question?

Mr. Whyte: Yes, I heard the question. I think you can answer it.

The Witness: Why, no.

Mr. Enright: Q. Have you made some arrangement with her for her services? A. No.

Q. None whatsoever?

A. None whatsoever.

Q. Well, did you discuss with her how much you were going to pay her?

(Deposition of Roy E. Hallberg.)

A. No, I did not.

(There was a brief interruption.) [132]

Mr. Enright: Q. Well, Mr. Hallberg, was it your intention when you became receiver here to delegate the routine matters to your wife, Mrs. Hallberg?

A. Well, inasmuch as she is a qualified and licensed broker, is quite familiar with all the details concerning an apartment building, I certainly expected to use some of her services and abilities.

* * * * * [133]

Q. Now, directing your attention to the \$40,000 net per year that you state you received for three or four years while employed by the Garrett Company in New York, did that company pay you that money itself, or did you receive a portion of that money as commissions from third [137] persons?

A. That was from Garrett & Company itself.

Q. Your principal activity in representing Garrett & Company was in the marketing of its wines through wholesalers or retailers, isn't that right?

A. Correct.

Q. And the principal marketing was carried on in New York City or Brooklyn, if that is a part of New York, metropolitan New York?

A. I think I stated previously that I controlled the entire State of New York. * * * * * [138]

[Endorsed]: Filed May 7, 1954.

[Title of District Court and Cause.]

DEPOSITION OF JOHN WHYTE

Taken at Los Angeles, California, April 22, 1954,
before Kathryn A. Kirby, Notary Public.

JOHN WHYTE

having been first duly sworn, deposed and testified
as follows:

Direct Examination

By Mr. Enright:

Q. Mr. Whyte, your petition for attorney's fees enumerates the dates on which you made telephone calls, is that correct?

A. If I may be permitted to examine the document——

Q. Well, I will aid you. Page 3, line 26, you made a telephone call to Mr. Camusi concerning the receivership development.

A. That's right.

Q. Now, noting the wording, as for example only, Mr. Whyte, of that occurrence on December 2nd, that recitation on page 3, line 26 in your Petition for Fees is substantially taken from your daily time sheet for that day of December 2nd?

A. I believe so. If you will permit me, I will examine my daily time sheet.

Q. That I want you to do.

A. My daily time sheet for December 2nd, 1953, contains this notation among others: "Telephone call to Camusi for information re latest developments."

(Deposition of John Whyte.)

Q. Yes. Now, bearing in mind that time sheet of [2*] yours of December 2nd and also examining your petition there, are you quite sure that in substance your petition, so far as time expended is concerned, is a recitation of your time sheets?

A. This petition was prepared so far as the nature of the services performed and the amount of time expended, from the daily time sheets kept regularly as part of the office procedure in my office.

Q. The dates of telephone calls and the substance of the telephone calls reflected in your petition is a reproduction of your daily time sheets, is that right?

A. It may not be an exact reproduction, but it is based upon the daily time sheets.

Q. Your petition reflects the substance of all the entries in your time sheets?

A. I think that's a fair statement.

Q. Well, that was your intention when you prepared it?

A. Yes, certainly.

Q. So by an examination—

A. All or substantially all of the entries in my time sheets.

Q. You didn't intentionally leave out any entries on your time sheet, did you?

A. Not that I can recall.

Q. So it would only be by close analysis, and if there [3] are any left out, you didn't intentionally leave them out, did you?

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

(Deposition of John Whyte.)

A. Not that I recall.

Q. So by examining your petition we can then ascertain the number of phone calls that were made to and from the various persons to whom you talked on the phone?

A. There may have been occasions upon which I failed to note on my time sheet every phone call which I made or received.

Q. But the time sheet that you prepared at the time is the best evidence of what did occur at the time?

A. The best evidence I have now, yes.

Q. Yes, and you would have to just strain your memory to try to recollect something that you didn't write down on your time sheet?

A. I certainly would.

Q. That's what I meant. That would be true also of conferences that you had that are reflected on your time sheet, and in turn are reproduced on your petition, conferences?

A. Yes, the conferences are reflected in the petition based upon what was noted on the time sheet.

Q. Now, you were in court on February 26, were you, Mr. Whyte, at the conference in chambers?

A. My daily time sheet for February 26, 1954, states that I attended conference in Judge Tolin's chambers [4] re settlement of case.

Q. Yes.

A. I recall that you and Mr. Camusi were present at that conference.

Q. Now, at that time you received a copy of the

(Deposition of John Whyte.)

order that was signed by Judge Tolin on that day terminating Mr. Hallberg's active duties and directing him to retain possession of money in the bank and under the control of the receiver?

A. Yes, I believe such an order was handed to me.

Q. And you have it now in your file there, haven't you? A. I do.

Q. Yours, I believe, is undated. No, it has the typed date at the bottom, February 26.

A. That is correct.

Q. That was about 4:30 in the afternoon, or 4:00 o'clock in the afternoon, as I remember it, but it was in the afternoon anyway?

A. No, the conference was in the morning. It was at about 9:30 o'clock in the forenoon of February 26.

Q. I stand correct. My memory had failed me. Now, directing your attention to your petition or your time sheets, whichever you prefer, on February 25 you called Mr. Hallberg concerning the settlement; that's page 11, line 7 of your petition. [5]

A. I have a rather definite recollection of that matter.

Q. Before calling Mr. Hallberg on that date, you received a telephone call from Mr. Camusi. That's on——

A. It's the 25th you are referring to?

Q. Yes. Yes.

A. Yes, my sheet shows that I received a telephone call from Mr. Camusi re termination of re-

(Deposition of John Whyte.)

ceivership by settlement between Richman and Mrs. Tidwell. That call came to me at a few minutes before 5 o'clock in the evening. I then attempted to reach Mr. Hallberg's residence at Corona Del Mar by calling Harbor 3818 and obtained no answer.

I finally reached one or both of them at some time later in the evening.

Mrs. Hallberg: Yes, 8:30 at night.

Mr. Enright: Q. That's on the 25th?

A. Correct.

Q. Yes. Now on the 26th, you——

A. I told them, incidentally, at that time that I was—I had been informed that the receivership was being terminated, and that I was to meet with them in Judge Tolin's chambers the following morning.

Q. In other words, on the 25th you told them that? A. Yes.

Q. Now, on the 26th you reported to Mr. Hallberg [6] and Mrs. Hallberg the results of the conference in Judge Tolin's chambers, February 26?

A. I note from my time slip that I received a telephone call from Mrs. Hallberg asking me what had taken place at the conference.

Q. You expended no time of your own on February 27 and 28; that's the Saturday and Sunday after that Friday phone call to——

A. Yes, my time slips show that on the 27th I spent five-tenths of an hour—one-half hour—in revising the receiver's First Report and Petition for

(Deposition of John Whyte.)

Allowance of Fees, as well as the attorney's Petition for Allowance of Fees, and a proposed form of Notice of Hearing on those two reports and petitions as necessitated by the court's order of February 26th relieving the receiver of his duties as of February 28.

Q. Other than that expenditure of a half hour, which I assume was at your office or your home, there were no other services rendered on the 27th to the receivership?

A. None on the 27th, and I have no time slip for the 28th.

Q. That would be a Sunday. You next contacted Mr. Camusi, or he contacted you, rather, on March 1st?

A. If I may refer to my time slips for that date, please.

Q. Yes. [7]

A. My time sheet for March 1st shows that I called Mr. Camusi with regard to the problems connected with the turnover of the assets to Mrs. Tidwell, the payment of bills, and other matters.

Q. Will you state the substance of that conversation as best you recollect it?

A. I don't have a definite independent recollection of that conversation, Mr. Enright. However, I think one of the subjects discussed was the problem of what to do about paying bills for services rendered to the receivership or materials delivered to the apartments during the month of February, 1954, when the statements from the creditors would

(Deposition of John Whyte.)

not be received until on or shortly after the 1st of March. I say, I think I discussed that with him, because there is a further notation on my March 1 time slip that I called you regarding the listing of creditors and the amounts of their claims in the Receiver's Report.

Q. That was the substance of the telephone call to me as to the listing of the creditors of the receiver in the Receiver's Report, wasn't it?

A. I—as I recall, I explained to you that the rules, local court rules required a listing of creditors and the amounts of their claims.

Q. That's right.

A. That I was in doubt as to how best to handle that [8] with reference to persons who were creditors as of the close of business on February 28, but for whom we did not have an amount of their claim because their bill had not yet been rendered.

Q. And is that all you recollect of the conversations with Mr. Camusi and with myself on that March 1st?

A. I must have discussed some other matters with Mr. Camusi, because my time slip says, "Re problems connected with turnover of assets to Mrs. Tidwell, payment of bills, et cetera." What I said to Mr. Camusi about the problems connected with turnover of assets I don't recall.

Q. You did discuss with me, though, the listing of the creditors of the receivership, and that under the court rule, the creditors should be listed, that the amounts of the creditors' claims could be ascer-

(Deposition of John Whyte.)

tained from the various managers; isn't that right?

A. I don't recall that you told me that the amounts could be obtained from the various managers. If you did, I'm sure you must have been mistaken, because the amounts could only have been obtained from the creditors themselves.

Q. No discussion about the managers knowing what they had purchased during the month of February? Does that refresh your recollection at all?

A. I can't recall.

Q. Yes. Now you next had a conversation with [9] Mr. Camusi on March 2nd, is that right?

A. If I may refer to my time slip for that date. Bear in mind, Mr. Enright, that it's possible that there may have been telephone conversations which I had either with you or Mr. Camusi which are not recorded on these time slips, but I think I have stated that substantially all of the conversation are noted here.

Q. That I understand.

A. Yes, on March 2nd I received a call from Mr. Camusi regarding title documents to be turned over to Mrs. Tidwell and regarding the receiver's accounting.

Q. On the same day you received a call from Miss Cosgrove, is that right?

A. I did. I recollect that Mr. Camusi asked me about the deeds to various small parcels of real property belonging to the former Richman trust, the note and trust deed covering the Oliver Cromwell, the stock certificates for those few stocks that

(Deposition of John Whyte.)

were owned by the receivership. He asked where those were kept. I telephoned Mrs. Hallberg, and she told me that they were kept in a safe deposit box at one of the banks.

I then think I called Mr. Camusi and arranged for the delivery of those documents to his office by Mr. and Mrs. Hallberg.

Mrs. Hallberg: Just Mister.

The Witness: It seems to me that Mr. Hallberg was [10] going to stop by the bank and pick them up.

Q. On March 3rd, your notes show no services being rendered, do they?

A. None on March 3rd.

Q. March 4th you talked to Mrs. Hallberg, did you, on the subject of payment of post-February bills? A. Yes, I did.

Q. That is on March 4th? A. Yes.

Q. What was that conversation?

A. All I can recall, being refreshed from the notation on my March 4th time slip, is that we discussed this question of paying bills for services rendered on or prior to February 28 where the bills had not yet been received, or had not been received until after February 28.

Q. And you had a phone conversation on March 4th with Mr. Camusi concerning that same subject matter, did you?

A. I am not sure whether I discussed the same subject matter with Mr. Camusi or not. My time slip merely says that I—there were telephone calls

(Deposition of John Whyte.)

to Mr. Camusi and to Mr.—yes, to Mr. Camusi and to Mr. Enright re these matters. I believe that one of the matters must have been this——

Q. Post bills, February bills? [11]

A. Yes, February services—bill didn't come in till March 1 or after.

Q. That's right, and what did Mr. Camusi tell you on March 4th on that subject matter?

A. I can't remember.

Q. What did I tell you on that subject matter?

A. It seems to me that you expressed the opinion either then or at the time I talked with you on March 1st that you felt the bills should not be paid.

Q. Yes, and Mr. Camusi, didn't he tell you in his conversation of March 4th or after February 26th conversations as related to your time sheets that they would not pay those bills?

A. Yes, you refresh my recollection. Mr. Camusi told me either in substance or in effect some time during those early days in March that he or his client didn't desire to pay those bills. In fact, I think Mrs. Hallberg told me that Mr. Udall would not pay the bills, something to that effect.

Mrs. Hallberg: Wanted us to do it.

The Witness: And wanted Mr. and Mrs., or Mr. Hallberg to do it.

Mr. Enright: Do you have any objection, Mr. Whyte, to my finding out about this conversation at this time from Miss Cosgrove?

Mr. Whyte: None whatever. [12]

(Deposition of John Whyte.)

Mr. Enright: Do you recollect when, or what, Mr. Udall said on that subject, Miss Cosgrove, or Mrs. Hallberg?

Mrs. Hallberg: Yes, Mrs. Hallberg or Miss Cosgrove.

Mr. Enright: Yes.

Mrs. Hallberg: On March 1st when he came into the office, he wanted us to pay all the bills because they were our concern.

Mr. Enright: That is, Mr. Udall told you that?

Mrs. Hallberg: Yes, and there were one or two things that we had a question on that weren't quite satisfactory, and he wanted us to write checks and hold them on those.

Mr. Enright: And did he say anything about having picked up the money for the week end?

Mrs. Hallberg: Yes, he expressed the reason, which has validity——

Mr. Enright: Well, I am not concerned——

Mrs. Hallberg: ——inasmuch as it is on a cash basis, and of course if the rent was paid on a Sunday and applied to March, he thought they ought to pick up the money.

Mr. Enright: Now, would you tell me your best recollection of what he said to you?

Mrs. Hallberg: That was exactly what he said.

Mr. Enright: He told you that it had validity?

Mrs. Hallberg: No. That was my comment. [13]

Mr. Enright: That's what I meant, Mrs. Hallberg. I merely want——

Mrs. Hallberg: He said—he used the expression

(Deposition of John Whyte.)

that after all, the buildings were carried on a cash basis, and because the rents at any one day did not apply to any one period, he felt that they should pick up those rents, and he had so directed the managers.

Mr. Whyte: By "those rents" you meant what, Mrs. Hallberg?

Mrs. Hallberg: What had been picked up over the week end.

Mr. Whyte: For February 26, 27 and 28?

Mrs. Hallberg: Yes.

Mr. Enright: Now, continuing, Mr. Whyte——

Mr. Whyte: Off the record.

(A discussion was had off the record.)

Mr. Enright: She would testify the same if she were under oath, I am sure.

Mrs. Hallberg: Yes.

Mr. Enright: Q. Now, Mr. Whyte, your next entry as to telephone calls apparently is March 9?

A. No. I made a telephone call to Mrs. Findeisen on the 5th of March.

Q. That's correct, my error. Yes, it is, to Miss Findeisen on March 5th.

A. That's right. [14]

Q. And your next, after March 5th phone call to Miss Findeisen, is March 9 to Mr. Camusi?

A. Speaking only of phone calls now?

Q. Yes, that's right, sir.

A. Yes, on March 9 I made a call to Mr. Camusi regarding the closing of the Receiver's Ac-

(Deposition of John Whyte.)

counts and the payment of bills rendered during the first part of March.

Q. Now, you had a conference on March 7. Does your time sheet show the March 7 conference, by the way? I don't——

A. Yes, I had a conference with Mr. and Mrs. Hallberg at their home in Corona Del Mar on the evening of March 7, which was a Sunday, regarding the problems incident to final accounting and preparation of schedules.

Q. Is that the day on which you phoned Judge Tolin?

A. Yes. We had returned from dinner at the nearby Country Club. We began discussing these matters. Among others we discussed the subject of paying bills which did not come in until after the first of March covering services rendered or materials furnished during February. Mr. Hallberg then called Judge Tolin and spoke with the Judge about several matters.

He then handed the phone to me, and I discussed the subject with the Judge, who instructed me to have those bills paid by Mr. Hallberg. In fact, if I recall correctly, Judge Tolin, I think, made the same instruction [15] to Mr. Hallberg. All I could hear were Mr. Hallberg's replies to the Judge, but it seems to me they were discussing the same subject; and then I came on the phone for more specific instructions.

Q. Well, you heard Mr. Hallberg on the phone

(Deposition of John Whyte.)

at this residence and you heard him mention the subject matter of paying these bills?

A. I think he did. Yes, I think he did mention that subject matter.

Q. Do you recollect what else he said, if anything; that is, Mr. Hallberg?

A. I can't recall.

Q. Now, you in turn talked to Judge Tolin at that time? A. I did.

Q. Did you tell him that Mr. Camusi and I had talked to you concerning this subject matter and advise the court or the Judge that there was a dispute between us?

A. I believe I did. Yes, I think I told the Judge that Mr. Enright had objected to their payment; that Mr. Camusi was amenable to the payment, or that he wanted them to be paid by us.

Q. Well, did you use the word "amenable" or—

A. I—I can't remember what word I used, Mr. Enright, but the substance of what I said was that, as my best recollection brings it back to me, that you [16] didn't wish the receiver to make the payments, and that Mr. Camusi either did or was agreeable to it.

Q. And did you tell him also that Mr. Udall had requested Mrs. Hallberg to pay them?

A. I don't believe I mentioned Mr. Udall.

Q. Now did you advise the court that these bills did not pertain to the employees' checks; it was only pertaining to various vendors of materials,

(Deposition of John Whyte.)

utilities, and things of that nature as shown on Exhibit C?

A. I didn't—I had no idea as to the detail of the bills. I—what they were, specific items had been rendered or services performed, I didn't discuss.

Q. You didn't know, is that the—

A. I don't know; I don't think I knew. I knew that they covered, or Mr. Hallberg had reported that they covered services rendered or materials delivered during the month of February for which no billing had been received until on or after the 1st of March. [17]

* * * * *

Q. Did you realize or know that there was about \$6,000 involved in that transaction?

A. In what transaction?

Q. In the payment of these bills after March 7, 1954. [18]

A. Before I answer, may I check my time slips here to see whether I had notified you?

What was the last question, Miss Reporter?

(The pending question was read by the reporter.)

The Witness: I note from my March 10 time slip that I conferred with Mrs. Hallberg and Mrs. Findeisen, the bookkeeper, at the Oliver Cromwell regarding the Receiver's Final Report to the Court and the makeup of the schedules to be attached thereto. I had no idea of the amount involved, because this Schedule C which reflects disbursements made by the receiver as directed by the court cov-

(Deposition of John Whyte.)

ering liabilities incurred prior to February 28, 1954, but not prepared until after that date, was not ready at the time I discussed the matter with Mrs. Hallberg and Mrs. Findeisen on March 10.

Mr. Enright: Q. And you further conferred with Mr. Hallberg on March 13, going over the report and the schedule, didn't you? A. No.

Q. I am taking that from your petition on page 13, line 10. On March 13 you have listed there as a service being rendered going over the report and schedules. I assume it to be of the receiver.

A. Just a moment. No, both my petition and my time sheet for March 13 state "Going over draft of his report and schedules to be attached thereto with the [19] receiver."

Q. That's what was my question, went over them with the receiver, Mr. Hallberg. A. Yes.

Q. On March 13. A. That's right.

Q. Then the next date you rendered services was March 15 concerning the subject matter of petition for fees. You had a conference with Judge Tolin?

A. I did.

Q. And the next day—

A. May I amplify my answer? On March 13 Mr. Hallberg came to my office, and we went over a yellow draft of his final report and schedules, which was thereafter prepared in final form and mailed to him for signature.

Q. Yes.

A. Now, on March 15, what was your question, sir?

(Deposition of John Whyte.)

Q. Your next rendition of services is on March 15 when you had a conference with Judge Tolin?

A. I did.

Q. And that is concerning fees? A. Yes.

Q. Who was present?

A. I was the only person present.

Q. What was said? [20]

A. To the best of my recollection, I asked Judge Tolin whether or not he desired that I name any specific amount in my petition for fees. That question was prompted by the fact that Judge Tolin had instructed the receiver not to name a specific amount in his petition for fees.

Q. When was that instruction given to Mr. Hallberg, if you know? A. I do not know.

Q. When were you advised of it?

A. That I don't know either. I know that Mr. Hallberg so advised me at one time.

Q. Now the next day you rendered services was on March 17. You phoned Mr. Camusi concerning closing the receiver's books? A. I did, sir.

Q. At no time did you inform me or Mr. Richman of the direction given by the court as you state on March 7, Sunday evening, 1954, is that correct?

A. Not that I can recall. By that, you mean at no time prior to the filing of my—of the receiver's first and final report and petition for fees with the court and the mailing of a copy thereof to you?

Q. Was there anything else said by Judge Tolin concerning the subject matter of fees, either by him or by yourself on March 15? [21]

(Deposition of John Whyte.)

A. Yes.

Q. How long did the conference last?

A. It was a very short conference, because Judge Tolin was about to take the bench.

Q. What is "very short"?

A. Well, I'm sure it didn't last—I had another matter before Judge Tolin at the time concerning the Inglewood Federal Savings and Loan Association. To the best of my recollection, that was the principal matter which I discussed with him.

Q. What is "very short" was the question, Mr. Whyte?

A. Whatever conversations I had with the Judge regarding my petition for fees were less—were five minutes or less, to the best of my recollection.

Q. And all you recollect that was said in that five minutes or less is that you asked him whether or not you should specify an amount?

A. And his reply.

Q. And his reply? A. Yes.

Q. And——

A. His reply was that—my recollection is refreshed a bit by your question—his reply was that something to the effect that—strike that.

I recall that the question of extraordinary services was discussed. Judge Tolin said something to [22] the effect that the defense of the receiver on the criminal citation issued by the Air Pollution Control District and that Municipal Court action which was brought as a result thereof was in the nature of an extraordinary service.

(Deposition of John Whyte.)

Q. You had explained that to him, had you, that subject matter which resulted in his statement?

A. Yes. In fact, at the time I first learned of the criminal citation on or about February—on or about January 29, I believe that I telephoned Judge Tolin and discussed the matter.

Q. The Smog Control and the Air Pollution matter and the contracts pertaining to it were considered by you during the period about December 23 of 1953—

A. Yes, the day before—

Q. Wait until I finish now, because I want to leave it open; I don't want to pinpoint the date—and the end of December, that last week in December of 1953, that subject matter of the Air Pollution contracts—well, specifically, if you want to look it up, December 28, 1953, page 5, line 24 of your petition.

A. My December 24 time sheet reflects a conference I had with Mr. Hallberg at the Oliver Cromwell the day before Christmas in the afternoon which lasted for about—my trip out and back and conference lasted for two and four-tenths hours.

Q. That is in the afternoon you know?

A. It was after lunch. Yes, I had luncheon at the University Club that day and played dominoes with some of my old friends from O'Melveny & Myers. Mr. Hallberg asked me to examine the files with reference to Mr. Richman's contracts to purchase incinerator equipment for the Canterbury and the Oliver Cromwell. I took the files with me on that day.

(Deposition of John Whyte.)

Q. And you returned them to Mr. Hallberg several days later?

A. I did. I wrote a letter.

Q. That would be about December 29 that you——

A. I wrote a letter dated December 30, 1953, to Mr. Hallberg.

Mr. Enright: December what did he say?

The Witness: December 30, returning the files covering the installation of incinerator equipment at both the Canterbury and the Oliver Cromwell apartment buildings.

Mr. Enright: Q. What did you advise him orally or in writing on that subject matter?

A. I advised Mr. Hallberg orally, I believe, that having examined the files, it was my opinion that those were binding contracts, but that he had no obligation to pay the balance of the purchase price until after the equipment had been installed and approved by the Air Pollution Control District, at which time he became—would become liable for payment of the balance of the [24] purchase price which amounted to 90 per cent of the original price.

Q. Did you inform him in any manner as to the time of performance or as to the subject matter—well, as to time of performance?

A. By “time of performance,” you mean the time when the installation should be made?

Q. Yes.

A. I didn't discuss that question with him.

(Deposition of John Whyte.)

Q. Did you inform him or advise him in any respect concerning the subject matter of this elimination of smog was a subject for criminal prosecution and ordered by the Los Angeles District Pollution Board?

A. I did not.

Q. Did you realize that there was such a problem; that is, elimination of smog from these particular apartment houses at that time?

A. I don't recall that I knew anything particular about the smoke condition at the apartments. I knew only that this—these contracts had been signed and that the installation was to be made.

Q. And that the payment under the contract was conditioned upon the Air Pollution Board passing the installation; you saw that in the contract, didn't you?

A. I did.

Q. And you knew then, didn't you, that the Air [25] Pollution Board was going to make a check, a test, investigation of the installation, didn't you?

A. I did.

Q. Did you know that it would be a violation if that installation wasn't installed?

A. I suppose I did.

Q. Did you advise Mr. Hallberg?

A. I didn't discuss the question of installation with Mr. Hallberg. I so testified.

Q. That I appreciate, but you haven't so testified until now that you didn't advise Mr. Hallberg concerning the penal aspects of not performing that contract.

A. I did not mention such aspects.

(Deposition of John Whyte.)

Q. No. Now, did you know that during January that the performance of that contract was being held up?

A. I had no knowledge whatever that the performance of that contract was being held up. I——

Q. Mr. Hallberg never asked your advice on that subject matter at all, did he?

A. I have neither no knowledge now, nor have I any reason to believe that it was being held up.

* * * * * [26]

Q. Have you your time sheets there, Mr. Whyte?

A. I have.

Q. May I examine them again?

(The documents were handed to Mr. Enright.)

Mr. Enright: Now, it was your practice, wasn't it, Mr. Whyte, to make a notation as to the amount of time expended during a particular day——

The Witness: It was.

Mr. Enright: Q. ——by tenths of an hour?

A. As nearly as I can figure it.

Q. Yes. So if we were to read off the time specifications on each of these time sheets, we would find the amount of time expended on the particular day, is that right? A. That is correct.

Q. Well, then, I would like to read into the record here the time expended on the respective days, and I will ask you to check with me the time so that when I am through we can then have a full record of it. A. Very well.

(Deposition of John Whyte.)

Q. Now, commencing on November 30 there was 2.1 hours.

A. If it will be helpful to you, the green colored slips are my slips, and the yellow colored slips are my partner, Mr. Fitzpatrick's time slips.

Q. Yes. All right, so the first one being a green, there appear the figures 2.1, meaning two and one-tenth—— A. One-tenth. [34]

Q. ——one-tenth hours. December 1st, six hours.

A. Six hours.

Q. December 2nd, 2.3 hours. December——

A. 2.3 hours of my time, and one and a half hours of Mr. Fitzpatrick's time.

Q. That's on December 2nd? A. Right.

Q. December 3rd, six hours of your time. December 4th, seven-tenths of an hour of Mr. Fitzpatrick's time. December 7th, eight-tenths of an hour of your time. December 10, three-tenths of an hour of your time. December 12, three-tenths of an hour. December 16, four-tenths of an hour. December 17, two-tenths of an hour. December 18, 3.9 of an hour? A. Right.

Q. December 21, three-tenths of an hour. December 22, six-tenths of an hour. December 23, one hour. December 24, 2.4 of an hour?

A. Right.

Q. December 28, four-tenths of an hour. December 27, three-tenths of an hour. December 29, one hour.

January 4th, 1.9 hours. January 5th, seven-tenths of an hour. January 8th, nine-tenths of an hour.

(Deposition of John Whyte.)

January 9, four-tenths of an hour. January 11, one-tenth of an hour. January 15, 3.4 hours?

A. Right. [35]

Q. January 19, 1.1 hours. January 25, 5.6 hours. January 26, 1.3 hours. January 26, two-tenths of an hour. January 27, two-tenths of an hour. January 28, 2.2 of an hour. January 29, three hours?

A. That's true.

Q. Those are all correct through January, my reading of the number of hours?

A. So far as I have observed they are.

Q. Yes. Yes. December 1st is 2.6 hours. December 2nd——

A. This is February 1st, Mr. Enright.

Q. Thank you, you are entirely correct. February 2, is 2.7 hours. February 3, is 2.3 hours. February 4th is 1.1 hours. February 5 is five-tenths hours. February 6 is two-tenths hours. February 8 is four-tenths hours. February 9 is 1.2 hours. February 10 is five-tenths hours. February 12 is four-tenths hours. February 13 is three-tenths hours. February 15 is 2.2 hours. February 16 is 1.7 hours. February 17 is 2.4 hours. February 18 is three-tenths hours. February 25, five-tenths hours. February 27, five-tenths hours. February 26, one hour.

Those are correct through February as I read them? A. So far as I can see.

Q. Yes. March 1st, 3.4 hours. March 2, 2.1 hours. March 4, four-tenths hours. March 5, one-tenth hour. [36] March 7, nine-tenths hour. March 8, 1.1 hour. March 9, seven-tenths hour. March 10, 3.1

(Deposition of John Whyte.)

hours. March 11, seven-tenths hour. March 12, four-tenths hour. March 13, one hour. March 15, 2.3 hours. March 17, 2.5 hours. March 18, 1.8 hours. March 24 is 1.3 hours. March 25 is six tenths hour.

April 2, three-tenths hour. April 7, four tenths hour. April 8, two-tenths hour. April 10, nine-tenths hour. April 12, 2.4 hours. April 21, six-tenths hour.

That is the time reflected upon your time sheet?

A. That doesn't include at least one and possibly two time slips since April 21 nor does it include one-tenth hour expended on April 16 and two-tenths hour on April 19. For example, it doesn't include the time spent in deposition here last Thursday, which was April 22, was it?

Q. April 22, and today, April 24. Yes. That's correct. And you are asking to be paid \$3,000 plus extraordinary fees for the smog matter?

A. To the extent that the court determines that I should be paid.

Q. No, but you are asking to be paid \$3,000 plus extraordinary fees, aren't you, Mr. Whyte?

A. Right. That is what my petition asks for, Mr. Enright.

Q. Yes, and that's the amount you are asking for?

A. That is correct. And I expect to ask for additional compensation for the time I have devoted and will devote to this matter since I filed my petition for fees on March 18.

Q. And that would be at a rate exceeding \$30 an hour? [37]

(Deposition of John Whyte.)

A. I think you will find—I will let the figures speak for themselves.

Q. Well, your petition shows 90 plus hours, and you want some \$3,000 ordinary fees for those 90 hours that are shown on your petition?

A. My petition shows 91 hours up to and including, I believe, March 17 or 18.

Q. Now, I note here on December 1st you spent six hours, and among other things you accompanied Mr. Hallberg to Union Bank and Trust Company where “we conferred with Mr. Lipman, execution”——

A. “Executive Vice - president and others re Richman trust.”

Q. Will you read on the rest of it?

A. “We opened a new account in the name of Roy E. Hallberg as receiver of the former Richman trust. Hallberg also signed an authorization to charge checks written by Mrs. Tidwell or Richman dated on or before November 30, 1953, to the new account.”

Q. Go ahead.

A. “We then visited the La Loma apartments where we spoke to Miss Schumacher, the manager, exhibited to her order appointing Hallberg as receiver and collected certain rents totaling \$787.50. Also visited Fountain Manor apartment hotel, spoke to Mrs. Lipphardt, exhibited order appointing receiver, and generally explained situation. [38] She said she would turn over rents after order served on Richman and he had authorized her to

(Deposition of John Whyte.)

release funds to Hallberg. Same at Canterbury apartment hotel. Spoke to Mrs. Polly Gregg there. Western Arms apartment hotel, spoke to Mrs. Maude Kennedy. Drove 22 miles in my car seeing said apartment managers."

Q. You were rendering legal services, were you, when you were going with the receiver to instruct the managers to turn money over to him?

Mr. Whyte: I will object to the question as argumentative, calling for the conclusion of the witness, and let the facts speak for themselves. Refuse to answer it on those grounds.

Mr. Enright: Q. Did you do anything other than is noted here in these notations you have just read on December 1st, 1953?

A. I believe I have already stated that as to all of my time slips they reflect with substantial accuracy most, if not all, of the things which I did on each particular day. In some instances there may have been minor omissions that I failed to put down on my time slips.

Q. Do you recollect any minor omissions or things that you failed to put down on that December 1st time slip?

A. No, I don't recall anything else. Incidentally——

Q. You knew, of course, on that day the receiver [39] hadn't qualified, wasn't duly appointed receiver, didn't you, at the very time you picked—instructed or participated in the taking of the \$787?

(Deposition of John Whyte.)

A. I think I knew that his bond had not been filed with the court.

Q. Very well.

A. And if I may explain my answer further, please.

Q. Go ahead.

A. These time slips are virtually in every instance, made out at the close of the day upon which the services are rendered. In many instances—in fact, in most instances—I keep a running record during the course of the day as I perform the particular service; I note it on the slip. Then I review all of the matters that evening and make certain that my slip correctly reflects what I have done during the course of the day.

Q. But you did do these acts on December 1st that you have noted on your time slip?

A. I did.

Q. Yes, sir. Now, on December 2nd you expended 2.3 hours. Will you read your notation therefor so that it will be accurate from the reading of your own handwriting?

A. "Obtained form of petition for appointment of this firm as attorneys for receiver and form of order thereon. Dictating draft of petition and order and revising same. Conference with Hallberg re his bond. Telephone [40] call to Camusi for information re latest developments. Appearance in Judge Tolin's chambers and presentation of receiver's petition for authority to employ counsel and order employing same. Order signed and filed.

(Deposition of John Whyte.)

Q. And that reflects the things you did on December 2nd as best you can now recollect them, is that right? A. It does.

Q. Now, on December 2nd Mr. Fitzpatrick, your partner—am I correct so far? A. Yes.

Q. That he is your partner? He expended an hour and a half in rendering the following service, is that correct— A. Yes.

Q. —as noted on this note, this being typewritten. Shall we read it, or give it to the reporter to have her copy it? A. Be glad to read it.

Q. All right, you read it then.

A. "Hallberg came in at 9:00 a.m. re his bond as receiver. I telephoned Hecht at Fidelity and Deposit. He said that he had been asked last night by Richman to put up a supersedeas bond on appeal, that if a writ of supersedeas were issued, we might not be able to collect the premium of our bond out of the assets of the receivership. He therefore wanted to wait on the issuance [41] of the bond to see if a supersedeas were issued. I reported this to Hallberg. We agreed to wait one hour.

"After a while, Hallberg suggested that he talk to Judge Tolin's secretary. He called her, but got Judge Tolin, who said to get the bond in right away and that he would see that the premium was paid out of the receivership assets. I phoned Hecht and told him that if he weren't able to issue the bond, we would get it elsewhere. He then asked if it was O.K. for him to telephone Judge Tolin. I said yes.

(Deposition of John Whyte.)

He called back in a few minutes and said he would issue the bond. I gave him the title of the court and cause and Hallberg went over to his office to get the bond. Whyte came in and I reported to him what had happened."

Q. Now, on December 18, you expended 3.9 hours. Would you read your notes as to what your service consisted of on that day?

A. "Telephone calls to and from Mr. Harrison to obtain facts necessary to preparation of petition for authority to pay Christmas bonuses. Preparation and verification of said petition. Telephone call from Camusi asking for information re progress of receivership. Telephone call from Hallberg re petition. Clearing with Judge Tolin's secretary re when Judge can sign order. Presentation of petition and order to Judge Tolin ex parte in his courtroom. The Judge signed order. Left word for [42] Harrison to issue checks in payment of bonuses. Conference with Mrs. Hallberg re factual data needed for petition to renovate the individual apartments as they become vacant. Telephone call from Harrison re manner of paying Christmas bonuses."

Q. That reflects the services you rendered on that day, December 18, does it not?

A. To the best of my knowledge, it does.

Q. This is the only written record you have of the services rendered that day, isn't it?

A. It is the only written record I have. It is the original written record from which the petition was prepared.

(Deposition of John Whyte.)

Q. Now, on December 24 you expended 2.4 hours. Would you read your notes as to services that were rendered on that day?

A. "Conference with Hallberg at Oliver Cromwell re proposed petition for authority to renovate apartments, transfer of fire insurance policies to a mutual company, report to be filed by receiver, does receiver have to carry out Richman's contract to purchase incinerator equipment, bookkeeping problems, and other matters."

Q. What were the "other matters" that you can recollect at this time that were considered by you as attorney for the receiver?

A. I don't recall. [43]

Q. Have you any memoranda or record anyplace that will indicate what they were?

A. I do not.

Q. Now, the incinerator equipment referred to there is the equipment involved in the Smog Control order or citation, criminal citation, isn't it?

A. It's the equipment specified in the contracts which Mr. Richman made with Air Pollution Control, Inc., covering installation of certain smog control equipment in the incinerators at the Oliver Cromwell and the Canterbury.

Q. On December 24, is it your recollection that the file was then given to you by Mr. Hallberg pertaining to that subject matter of the incinerators and the smog control, or the smog control contract?

A. Yes.

Q. Yes.

(Deposition of John Whyte.)

A. I took the files with me in my brief case when I left Mr. Hallberg's office at the Oliver Cromwell.

Q. Thereafter you read the file, did you——

A. I——

Q. ——and you noted the time you expended in that connection on your time sheets? I refer you specifically to December 28, being your next time sheet, reading as follows: "Telephone calls from and to Harrison re construction of incinerator equipment for Canterbury and [44] Oliver Cromwell. Also re handling of petition for authority to renovate apartments." Is that correct, you did——

A. On December the 27th, the preceding day——

Q. Well now, that is December 28th that I just read to you. A. That is right.

Q. Now, on December 27, the next notation here, which seems to be out of order, but inadvertently, I am sure, did you have something to do with that subject matter of the contracts?

A. Yes. My time slip shows examination of files with reference to installation of incinerator equipment for Canterbury and Oliver Cromwell and liability of receiver to carry out contracts for such installation.

Q. And you expended three-tenths of an hour—— A. I did.

Q. ——on that subject matter at that time, is that right? A. That is right.

Q. Then your next time sheet, we having read

(Deposition of John Whyte.)

already the December 28th time sheet, is December 29. Would you read that time sheet?

A. Surely. "Taking petition for authority to renovate apartments to Judge Tolin's chambers. Telephone call to Harrison re court order requiring receiver to [45] permit plaintiff's appraisers to visit apartment houses and plaintiff's accountants to inspect 1953 books."

Q. Now, did you have a conference with Judge Tolin in chambers on December 29 concerning the subject matter of that petition?

A. I may have. I don't recall.

Q. You returned the Smog Control contracts to Mr. Hallberg or Mrs. Hallberg or Mr. Harrison on the date shown in your transmittal letter which is, I believe, already referred to in the deposition?

A. Yes.

Q. Would you read your notes as to the services rendered on January 4th resulting in 1.9 hours being expended?

A. "Conference with Judge Tolin in chambers re contents of first report to be submitted by receiver, petition for authority to renovate, proposed petition for authority to inventory assets and other matters. Telephone calls from Mrs. Hallberg and discussion of above items. Telephone call to Harrison re objections, if any, to inventory hereinafter mentioned. Telephone calls to Camusi and to Enright asking if they would agree not to require a detailed inventory of every item of furniture and fixtures in the five apartment houses for purposes

(Deposition of John Whyte.)

of report of receiver. They both agreed it was unnecessary." [46]

Q. Now, on January 15 you expended 3.4 hours. Will you read what services you rendered on that day?

A. "Telephone call from Lawrence Martin and also from Camusi re matters to be considered at hearing this afternoon on receiver's petition for authority to renovate apartments. Court appearance re hearing on said petition. Petition was granted. Conference with Hallberg in preparation for hearing on said petition."

Q. On January 19, 1953, you expended 1.1 hours in rendering the following services: "Preparing first report of receiver and petition for instructions. Telephone call to Harrison re data to be included in said report." Is that correct?

A. That's right.

Q. On January 25——

A. In fact, if I may state for the record, Mr. Enright, I think the allegations of the petition which I have filed as to the nature of the services performed on the various days are substantially in conformity with the notations on the time slips, so that——

Q. That I am aware of.

A. ——I think this is unnecessary, but if you wish to build up a long record here, I suppose that's your privilege.

Q. What you failed to do, Mr. Whyte, is to specify the hours on the respective matters. [47]

(Deposition of John Whyte.)

A. You already have noted in the deposition the number of hours spent on each day.

Q. Will you answer this question: On January 25, 1953, you expended 5.6 hours in rendering the following services:—

A. Shall I read them?

Q. Yes, if you will.

A. "Instructing and working with Harrison, Hallberg's bookkeeper, re preparation of schedules to be attached to receiver's first report. Dictating draft of receiver's first report and petition for instructions. Preparing notice of hearing on first report of receiver and petition for instructions."

Q. Now, what instructions did you give to Harrison on January 25 concerning Hallberg's bookkeeping or the books?

A. I instructed him with reference to the preparation of the schedules to be attached to the receiver's report.

Q. Do you recollect what you told him during that period of time?

A. If I may see a copy of your local District Court rules, I think perhaps it would refresh my recollection.

Q. Surely.

(The document was handed to the witness.)

Mr. Enright: Q. You might just tell us what section you instructed him concerning. [48]

A. I talked to him with reference to the requirements of Rule 18, Subdivision (b) of the local rules for the Southern District of California. I explained

(Deposition of John Whyte.)

to him that Mr. Hallberg's report should contain a brief summary of the operations of the receiver, an inventory of the assets, a schedule of all receipts and disbursements, and a list of all known creditors with names, addresses and amounts of claims, including taxes of all kinds, conditional sales contracts, and contingent claims known or which it is believed possibly exist.

Mr. Harrison asked me a great many questions about the preparation of schedules which would accurately reflect an inventory of the assets, a schedule of all receipts and disbursements, and a list of all known creditors with names, addresses and amounts of claims, et cetera.

Q. You gave him a copy of the rule, didn't you?

A. No, I didn't give him a copy of the rules.

Q. He took it down in shorthand when you read it to him, is that right, or do you know?

A. I don't know whether he took it down in shorthand or not. I know I explained the requirements of the rules to him, and he had a number of questions as to the mechanics of setting up the schedules, what should be shown thereon.

Q. Now, directing your attention to January 27, will you read your notations on that day? [49]

A. "Telephone call from Harrison re problems involved in preparing receiver's first report. Also criminal citation for alleged violation of smog regulations."

Q. After returning the contract pertaining to the incinerators or smog contract, this is the first

(Deposition of John Whyte.)

knowledge or notice you had of a criminal citation on that subject matter, is that right?

A. It is.

Q. That's your time slip for January 27, 1953, isn't it? A. That is correct.

Q. But it says '53. It means January 27, 1954?

A. It should be '54.

Q. Yes. You may change it now, if you wish; whatever you desire.

A. (Marking on document.)

Q. Then two days later, on January 29, you phoned Mr. Richman, didn't you, in accordance with—or read the January 29 notation of your services, will you, reflecting three hours expended?

A. "Telephone call from Harrison re criminal citation for violation of smog regulations. Dictating ex parte order and affidavit extending time to file receiver's first report and petition for instructions. Telephone call from Mrs. Hallberg re efforts being made [50] to dismiss criminal citation for violation of Smog Control Ordinances. Procuring Judge Tolin's signature on abovementioned order. Telephone call to Mr. Tow in office of Air Pollution Control District re citation for violation of Smog Ordinances. Telephone conversation with Judge Tolin re receiver's first report. Judge decided to modify Rule 18 (b) and postpone filing report until March 20, 1954, so that it might cover a full three months period. Telephone call to Harrison re delay in filing report—also problem of tenant who hadn't paid his bill but had left some of his clothes in the

(Deposition of John Whyte.)

apartment. Conference with Hallberg re his first report and other matters incident to receivership. Telephone call to Camusi re delay in filing report.

Q. May I see it?

A. Surely. I also recollect, although no mention of it is made on the time slip, that I telephoned——

Q. Mr. Richman?

A. ——you or Mr. Richman or both of you.

Q. At about 4:15 in the afternoon, Friday, January 29, and left the message with Mr. Richman's secretary, isn't that right?

A. I think that's right. I couldn't find Mr. Richman in his office, and I didn't find you in your office.

Q. Now, Mrs. Hallberg—— [51]

A. Incidentally, my telephone calls to you and Mr. Richman were with regard to this criminal citation, because Mr. Richman was named as a defendant in the citation.

Q. Yes, charged with a misdemeanor, isn't that right?

A. Yes, it was a misdemeanor.

Q. Yes. Now you have the notation here: "Telephone call from Mrs. Hallberg re efforts being made to dismiss criminal citation for violation of smog control order."

A. "Ordinances."

Q. "Ordinances." Thank you. And then immediately following that, will you read the next phrase here. I am having a little trouble with the first word.

A. "Procuring Judge Tolin's signature on above-mentioned order." That refers to an ex parte order

(Deposition of John Whyte.)

and affidavit extending time to file the receiver's report and petition for instructions.

Q. Now, going back to this portion of it pertaining to Mrs. Hallberg's efforts, did you have a conversation with her concerning her efforts to dispose of the criminal citation for violation of the smog——

A. Apparently did from my notes.

Q. What was the conversation?

A. I don't recall.

Q. On February 1st you appeared in Department 30A of our Los Angeles Municipal Court?

A. "Re arraignment in City of Los Angeles versus Richman and McConnell."

Q. At that time I told you that I would appear in behalf of Mr. Richman and also offered to appear for Mrs. McConnell, didn't I?

A. I don't recall that you offered to appear for Mrs. McConnell. I know I was appearing on her behalf at Mr. Hallberg's request since she was his agent at the time.

Q. After I had made a statement to the court, then you requested likewise that the matter be continued until February 23, is that right?

A. As I recall, we both requested that the matter be set over until February 23 at 9:30 a.m.

Q. Your request came after my request, though, didn't it?

A. I believe I extended you the courtesy of allowing you to address the court first.

(Deposition of John Whyte.)

Q. Yes. You expended 2.6 hours on that matter, didn't you, on that day?

A. On that matter alone, of course not.

Q. All right.

A. There are a number of other notations shown on the slip which I would like to read, if I may.

Q. You have once read them into the record, I think.

A. I have not read them into the record.

Q. Well, pardon me, you have not, so read the whole [53] of it then so we can——

A. "Conference with Mr. Tow of Air Pollution."

Q. No, read the whole of it, "February 1st." If you are going to read a portion of it, please read the whole.

A. Well, I have already read the first part. If you'd like me to read it again, I will.

Q. Yes, thank you.

A. "Appearance in Department 30A, Los Angeles Municipal Court re arraignment in City of Los Angeles versus Richman and McConnell. Set over until February 23 at 9:30 a.m. Conference with Mr. Tow of Air Pollution Control re case. Telephone call to Harrison urging him to see that Oxy Aire gets to work immediately on installation of smog control equipment. Telephone call from Mrs. Hallberg re result of court hearing. Dictating draft of first report of receiver and petition for instructions and revising the same."

(Deposition of John Whyte.)

Q. Will you read your memorandum of the services rendered on February 2 resulting in 2.7 hours being expended?

A. "Telephone conversation with Harrison re tax returns to be filed by receiver. Examination of defendants moving papers re new trial. Telephone call to and call from Camusi re tax problems and necessity, if any, for moving for the appointment of a permanent receiver. [54] Telephone call to Harrison requesting names of known creditors and telephone conversation with Mrs. Hallberg re problems discussed with Camusi. Telephone call from Mr. Hallberg re tax problems. Conference with Judge Tolin re appointment of Hallberg as permanent receiver and re associating tax counsel for tax problems."

Q. Now on February 3rd you next rendered services on the Smog Control matter which resulted in the following memorandum being made, and I quote it: "Telephone call from Mrs. Hallberg re tax problems, removal of—— A. Part.

Q. ——part of parapet from Canterbury and Smog Control problems. Conference with Mrs. Hallberg re such problems——

A. ——as Smog Control, advisability of selling Western Arms and Fountain Manor, tax returns, et cetera."

Q. All right.

A. Those are two of a number of items which appear on the time slip for that day.

(Deposition of John Whyte.)

Q. Well, I am only inquiring about the Smog Control matter.

There is another notation here "Telephone conversation with Tow of Air Pollution Control re conference with City Attorney and inability of Oxy Aire to perform their contract at Canterbury. Telephone call to Oxy Aire re their ability to install equipment promptly—— [55]

A. Promptly.

Q. ——at Oliver Cromwell and Canterbury."

These are the only notations pertaining to the Smog Control matters as of that day, February 3rd?

A. I believe that is correct.

Q. There was a total of 2.3 hours rendered, services or time expended that day?

A. On those and other matters.

Q. On those and other matters. On February 4th you had a telephone conversation with myself, Mr. Enright, concerning the Smog Control problem?

A. I did.

Q. And on various other matters?

A. That's true.

Q. And the total for your time of February 4th was 1.1 hour?

A. That is true. That matter that you mentioned and other matters were performed on that day as shown on the time slip.

Q. You also dictated a letter, did you, to the Air Pollution Control District re progress being made towards installation of incinerator equipment?

A. I did.

(Deposition of John Whyte.)

Q. Have you got that letter? I haven't seen that yet, Mr. Whyte?

A. I showed it to you on two occasions. It is in [56] my files and you may see it again if you'd like.

(The document was handed to Mr. Enright.)

Mr. Enright: Q. Thank you.

For the record, I will read the letter into it. It's addressed to Air Pollution Control District, 5201 South Santa Fe, Vernon, California. February 4th, 1954, attention Mr. Tow.

"Gentlemen:

"Following my telephone conversation with your Mr. Tow yesterday afternoon regarding the installation of Oxy Aire——

Mr. Whyte: "By Oxy Aire."

Mr. Enright: ——by Oxy Aire of Smog Control equipment in incinerators located at the Oliver Cromwell apartment hotel, 418 South Normandie, Los Angeles, and the Canterbury apartment hotel, 1746 North Cherokee, Hollywood, I discussed the matter over the telephone with Mr. Manalis, one of the officers of Oxy Aire. Mr. Manalis informed me that his company had on hand sufficient material to install such incinerator equipment, including enough metal of a particular heat resistant type which is in a somewhat short supply throughout the country. Mr. Manalis further stated that his company would commence the work of installation at the Oliver Cromwell on Monday morning, February 8, and at the Canterbury a few days later.

He estimated that it would take from two to three weeks to complete the installation. [57] I trust that this information will be helpful to you.

Yours very truly,

John Whyte."

Mr. Whyte: "Attorney for Roy E. Hallberg, receiver of the assets of the former Richman trust."

Mr. Enright: Q. Now, to summarize your services after February 4th, 1954, the services consisted solely of appearing up at the City Attorney's office, did it not, at a conference had between one of the City Prosecutors, yourself, Mr. Hallberg, and myself?

A. You are speaking now of my services only with reference to the Smog Control problem?

Q. Oh, yes, just the Smog Control problem.

A. And after which date did you mention?

Q. After February 4th. That's the date of the letter there which we just read into the record.

A. No, they did not.

Q. What else did you do?

A. On February 5th, I received a telephone call from Mr. Camusi advising me that Mr. Richman had been picked up on a bench warrant. I remember I questioned that. I told Mr. Camusi that he must be in error, that the criminal matter had been continued for several weeks, but Camusi insisted that that information had been given to him by yourself, either to him or to Lawrence Martin.

I told him I thought there must be a mistake, [58] but since I was concerned about it, I tele-

(Deposition of John Whyte.)

phoned to Mr. Tow of Air Pollution Control District regarding that matter.

Q. Regarding what matter, the picking up of Mr. Richman, or what?

A. Yes, regarding whether or not the case had—something had happened to the lawsuit that it had been reactivated without my knowledge.

Q. I see. Did you call him from Mr. Richman being picked up, or you were representing the receiver then? Your problem was Mr. Richman being picked up, wasn't it, not——

A. No. I was concerned——

Q. I see.

A. ——for fear the action taken against Mr. Richman would lead to action being taken against Mr. Hallberg or his agents; that they might be picked up on a bench warrant.

Q. Well, will you proceed to explain what other services you rendered concerning the Smog matter, other than this telephone call from Mr. Camusi?

A. If you will allow me to look at my sheets, I will tell you.

Q. Proceed, sir.

A. On February the 9th I attended a conference among Messrs. Tow, Enright, Hallberg, and myself in the office of Deputy City Attorney Davis re criminal complaint charging violation of Health and Safety Code on account of [59] smoke from incinerator at Oliver Cromwell. Complaint was dismissed.

Q. Then there was 1.2 hours expended that day?

(Deposition of John Whyte.)

A. That's right.

Q. Any other services on the Smog matter other than the telephone call from Camusi?

A. Any services subsequent now to February 9, is that your question?

Q. Yes, February 4th—I won't argue the point with you. The record will speak for itself.

A. Well, without having to go through each and all of the rest of my time slips from February 9 on, let me say that I don't recall of any further work in connection with the Smog Control problem, subject to being corrected by the allegations of my petition.

Q. Well, the fact is that on that day when we were in the City Prosecutor's office, Mr. Davis, the City Prosecutor, told you after you had signed a stipulation in his office that the complaint, criminal complaint, would be dismissed, isn't that right?

A. He did.

Q. So that was the end of the matter, wasn't it?

A. I think it was, as I say. I may have advised Mr. Hallberg later with reference to performance of these contracts which Mr. Richman had entered into with Air Pollution Control District. I am not certain of it. [60] * * * * *

Q. You commenced private practice, or practice with Mr. Fitzpatrick about January 1st, 1953?

A. I went into partnership with Mr. Fitzpatrick on January 1, 1953.

Q. Before that time you were associated with the law firm O'Melveny & Myers?

(Deposition of John Whyte.)

A. I was, for a period of almost exactly 10 years.

Q. And before becoming associated with that firm, what?

A. I was associated with the firm of Schultheis & Laybourne from approximately March, 1940 until June or July of 1941.

Q. Have you now recited all of your associations since you commenced practicing law in California? A. I have. [62]

* * * * *

[Endorsed]: May 7, 1954.

[Endorsed]: No. 14702. United States Court of Appeals for the Ninth Circuit. Frederick I. Richman, Appellant, vs. Lyda Tidwell, Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, and John Whyte, attorney for Receiver, Appellees. Lyda Tidwell, Appellant, vs. Frederick I. Richman, Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust and John Whyte, attorney for Receiver, Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: March 26, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14702

LYDA TIDWELL, Etc.,
Plaintiff and Appellant,
vs.

FREDERICK I. RICHMAN, Etc., et al.,
Defendants and Appellants.
ROY E. HALLBERG, Receiver.

STATEMENT OF POINTS

1. The Trial Court erred in assuming it had power or jurisdiction to adjudicate the plaintiff's and defendant's pro-rata rights to the balance of the funds in the possession of the receiver upon settling the receiver's accounting.

2. If the Trial Court did have power or jurisdiction to determine the plaintiff's and defendant's pro-rata rights to the balance of the funds in the possession of the receiver upon settling his accounting, it committed error in the following particulars:

(A) By failing to charge the plaintiff's interest in the balance of the funds in the amount of \$785.00 being funds under the control of the receiver, which the plaintiff's agents took possession of and retained;

(B) By failing to charge the plaintiff's interest in the balance of the funds in the amount of \$1290.59, being rents collected by the plaintiff's

agents which were required by the order of the Court to be collected by the receiver;

(C) By failing to charge the plaintiff's interest in the balance of the funds in the amount of \$2027.27, being a sum of money paid by the receiver on account of an obligation assumed and required to be paid by the plaintiff in accordance with the settlement agreement made by plaintiff and defendant terminating the receivership and settling their dispute;

(D) By granting the plaintiff a credit in the amount of \$2476.38, being one-half the real property taxes which were paid by the plaintiff, when pro-rating the balance of the funds remaining in the possession of the receiver between the plaintiff and defendant;

(E) By granting the plaintiff a credit in the amount of \$1300.00, being one-half the cost of catalytic units paid for by plaintiff, when pro-rating the balance of the funds remaining in the possession of the receiver between the plaintiff and the defendant.

3. The Court erred in awarding the receiver, Roy E. Hallberg, a fee for his services as receiver in the amount of \$6,000.00 for the following reasons:

(A) The receiver misrepresented his qualifications and experience to the Court and thereby obtained his appointment;

(B) The receiver represented that he was semi-retired and had ample time to render the services

required by the receiver in this case, and concealed that he had accepted full-time employment from an agency of the County of Orange, State of California, at a monthly salary of \$350.00;

(C) The receiver concealed that he would and did delegate his executive duties to others; and,

(D) The receiver failed and neglected to perform the duties of a receiver and performed duties in a negligent and careless manner;

4. The Trial Judge abused his discretion by refusing, upon petition, to disqualify himself to hear the accounting of the receiver and his petition for fees.

5. The Court erred in awarding the attorney for the receiver fees in the amount of \$1800.00, in that said fees are excessive and unreasonable.

Dated this 29th day of March, 1955.

BRADY, NOSSAMAN & PAULSTON
and

JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT,

Attorneys for Defendants and
Appellants

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 30, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS

1. The trial court correctly assumed jurisdiction to adjudicate plaintiffs' and defendant, Frederick I. Richman's rights, respectively, to the balance of funds remaining in the hands of the receiver after the payment of all bills and costs of the receivership, including the receiver's fee and the fee of his attorney.

2. As to the Points raised on appeal by defendant Richman with respect to the division between plaintiff and defendant Richman of said balance remaining in the hands of the receiver, the trial court did not commit error:

(A) In failing to charge plaintiff's interest in the balance of the funds in the amount of \$785.00, which \$785.00 consisted of a petty cash fund which was part of the assets purchased by plaintiff from defendant Richman.

(B) In failing to charge plaintiff's interest in the balance of the funds in the amount of \$1,290.59, or for any other amounts, as rents collected by plaintiff's agents.

C. In failing to charge plaintiff's interest in the balance of the funds in the amount of \$2,027.27, being a mortgage payment made by the receiver on or about February 28, 1954. (As a matter of fact, plaintiff's interest was charged with one-half of this amount as is revealed by the order of court docketed and entered November 19, 1954.

D. In granting plaintiff a credit for one-half of the real property taxes which were paid by plaintiff out of her own separate funds, which taxes covered the last two month period during which plaintiff and defendant were joint owners of the property.

E. In granting plaintiff credit in the amount of \$1,300.00, being one-half the cost of catalytic units which plaintiff paid out of her own separate funds.

3. That if any mistakes were made in computations, defendant Richman waived the same by failure to object in the trial court.

4. As to the points raised on appeal by plaintiff Lyda Tidwell with respect to the division between plaintiff and defendant of said balance remaining in the hands of the receiver, the trial court committed error

(a) In granting defendant Richman a credit of one-half the agent's fee for the month of November, 1953, the last month in which he acted as agent of the Richman Trust, prior to the court terminating the same and appointing the receiver to operate said properties pending a final determination of the action;

(b) In failing to credit plaintiff's interest in the sum of \$906.50, consisting of seller's escrow fees in the amount of \$329.00 and revenue stamps in the amount of \$577.50, which were defendant's rightful expenses as seller in connection with the sale of all his right, title and interest in and to the assets of the Richman Trust to plaintiff.

5. Plaintiff did not appeal from that portion of

the order finding the receiver's account to be true and correct, and fixing the fees of the receiver and his attorney, but plaintiff does appeal from the order insofar as it charges plaintiff one-half the sum of \$89.20 paid by the receiver for copies of depositions, since said depositions were taken in connection with defendant's objections to the account of the receiver. (Plaintiff did not object to the fixing of reasonable fees for the receiver and his attorney, nor has plaintiff appealed from that portion of the order.

6. The trial court did not abuse its discretion in refusing to disqualify itself in hearing the accounting of the receiver and petition for fees.

Dated this 12th day of April, 1955.

MARTIN, HAHN & CAMUSI,
/s/ By LAURENCE B. MARTIN,
Attorneys for Plaintiff and
Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 13, 1955. Paul P. O'Brien, Clerk.

In the
United States Court of Appeals
For the Ninth Circuit

FREDERICK I. RICHMAN,

Appellant,

vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver of all
the real and personal property constituting the former
Richman Trust, and JOHN WHYTE, attorney for Receiver,

Appellees.

LYDA TIDWELL,

Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Re-
ceiver of all the real and personal property constituting
the former Richman Trust, and JOHN WHYTE, attorney
for Receiver,

Appellees.

Opening Brief Appellant
Frederick I. Richman

BRADY, NOSSAMAN and WALKER
and

JOSEPH T. ENRIGHT
541 South Spring Street
Los Angeles, California

Attorneys for Appellant

FILED **D**

AUG 17 1955

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In the
United States Court of Appeals
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FREDERICK I. RICHMAN,

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LYDA TIDWELL,

Appellant,

vs.
FREDERICK I. RICHMAN, ROY E. HALLBERG, as Re-
ceiver of all the real and personal property constituting
the former Richman Trust, and JOHN WHYTE, attorney
for Receiver,

Appellees.

No. 14702

Opening Brief Appellant
Frederick I. Richman

JURISDICTION

The Trial Court acquired jurisdiction under 28 USC 1332 (a) (1) in that Appellant Lyda Tidwell as plaintiff alleged in her Complaint her residence as being the State of New Mexico and Defendant—Appellant Frederick I. Richman and the other Defendants' residences being the State of California. These allegations were not denied and were proved. Her Complaint sought termination of an *intervivos* private trust, the assets of which were of a value exceeding \$1 million,

and the appointment of a Receiver. A receiver was appointed before judgment was entered upon the issue of undue influence. Thereafter Appellants Richman and Tidwell settled their differences. This appeal arises out of the Trial Court's judgment in the ancillary receivership proceeding settling the Receiver's account, fixing fees and distributing the moneys in the possession or under the control of the Receiver between the Appellants Richman and Tidwell. The jurisdiction of this Court rests upon Section 1291 of the Judicial Code as Amended (28 USC 1291).

PRELIMINARY STATEMENT OF CASE

On November 30, 1953, the Trial Judge directed the attorneys for the parties to appear at his Chambers and delivered to them his Memorandum Decision of that date. (R. 2). The decision determined that Appellant Frederick I. Richman who had for approximately twenty-five years practiced law in Los Angeles and had engaged in many business enterprises, was constructively guilty of unduly influencing his sister, Appellant Tidwell, at the time they executed the trust. The Trial Judge advised counsel he was forthwith appointing a Receiver. On December 2, 1953 Appellee, Roy E. Hallberg, qualified as the Receiver. On February 26, 1954, the Trial Court, pursuant to a Stipulation of the parties based upon their Settlement Agreement of the previous day, made an Order relieving the Receiver of his active duties, as of 5 p.m., February 28, 1954, except "money in the bank and under the control of the said receiver", and directed

the Receiver to account. (R. 56). On March 18, 1954, the Receiver filed his Report and Petition for allowance of a reasonable fee (R. 75), and his attorney also petitioned for allowance of a fee of \$3,000, plus an extraordinary fee. (R. 58). On April 6, 1954, Appellant Richman filed an Answer and Objections to these Petitions (R. 125). On April 7, 1954, Appellant Tidwell filed her objections to the Receiver's account and petition. (R. 145). On April 12, 1953, Appellant Tidwell (hereinafter referred to as Tidwell), filed a Reply (R. 152), to Appellant Richman's Objections. (R. 152). Appellants Richman's and Tidwell's issue involve the right of the Trial Court to adjudicate a dispute as to the interpretation of their Settlement Agreement of February 25, 1954, except to the extent that it may order moneys remaining in the possession of the Receiver after payment of expenses to be deposited with the Court when discharging the Receiver.

The Accounting and Petitions of the Receiver and his attorney, the Objections of the Appellants and the Reply of Tidwell constitute the pleadings and the manner in which the following general statement of the questions are raised. The questions involve the Trial Court's:

- A. Determination of the amount of moneys in the possession of or under the control of the Receiver, and directing that specific amounts for certain specified items involved in the Settlement Agreement of February 25, 1954, be paid to the respective Appellants; and

B. Awarding fees in the amount of \$6,000 to the Receiver and \$1800 to his attorney.

Richman shall, since he charges a gross abuse of judicial discretion, attempt to concisely abstract this voluminous record, (the nature of the proceedings considered).

I.

STATEMENT RE: SETTLEMENT—ACCOUNTING —DISTRIBUTION OF FUNDS—RESULTING IN GROSS ABUSE OF JUDICIAL DISCRETION.

Appellants' settlement of their differences after the appointment of the Receiver, is evidenced by two letters dated February 19th and 25th, 1954, being Exhibit H (R. 807), appearing verbatim (R. 139-144). The plan of the settlement was an offer of Richman:

- A. To buy or sell his interest in the Trust for \$600,000; and
- B. The Receiver to retain all money in the bank and under his control at the end of February to pay the Receiver's and Trust expenses subject to his accounting; the balance to be divided equally.

Tidwell elected to buy, by her letter acceptance. (R. 143). As required by the letter agreement, an escrow was opened, being Exhibit E, (R. 798). The Escrow Instructions (R. 800) provided):

“The following adjustments only are required in this Escrow”.

Thereafter the printed form specifically provided:

“Prorate taxes, including all items appearing on tax bill, except taxes on personal property not conveyed through this escrow to _____, based on latest tax statement in your possession.”

Appellant Tidwell and her attorney signed these Instructions and there was inserted the word “None” in the blank space. Likewise the form stated:

“Prorate rentals on basis of statements approved by me to _____, but make no adjustment on uncollected rentals.”

There was inserted the word “None”. The Seller’s Instructions were signed by Appellant Richman and they contained the following words, which were inserted in a blank space:

“Notwithstanding any of the printed provisions herein I, the undersigned, Frederick I. Richman, am not to be at any expense under this Escrow.”
(R. 800).

On February 26, 1954, the attorneys for the Appellants executed a written Stipulation received in evidence at pretrial as Exhibit C (R. 798), which appears verbatim at R. 54. Insofar as material to the facts here stated, it provided:

“That the Receiver, Roy E. Hallberg, be relieved of the possession, control and management of the assets of the said Richman Trust, excepting funds in bank and under the control of said receiver as of 5:00 o’clock Sunday, February 28, 1954.”

This stipulation was presented to the Court and it on February 26, 1954, made an Order, received in evidence

at the pretrial as Exhibit D (R. 798), which appears verbatim at R. 55. It provided that the Receiver:

“Shall be relieved of his active duties of management, control and possession of the assets known as Richman Trust as of 5:00 o'clock p.m. Sunday, February 28, 1954, and that the said Receiver Roy E. Hallberg, his agents and employees and all other agents, servants and employees of the said Richman Trust give over control and possession to Lyda Tidwell, plaintiff, of all the assets of the said Richman Trust, excepting money in bank and under the control of the said Receiver but including all other said assets of the Richman Trust and the following apartment houses and their contents.”

Thence the five Los Angeles apartment houses by name were specified. At a pretrial there was received in evidence Exhibit A (R. 796) a Mutual Release; Exhibit B (R. 797) a Dismissal, appearing verbatim in the record at R. 124, to which the Trial Court added, in ordering the Dismissal filed:

“It is so ordered except that jurisdiction is retained over all moneys, credits and assets in possession or under control of Roy E. Hallberg, Receiver, heretofore appointed here and over said Receiver, and to fix his compensation and allow his expenses, including fee for his attorney. March 22, 1954—Ernest A. Tolin, Judge.”

At the same pretrial hearing Exhibit F, a letter agreement with Air Pollution Control, Inc., dated October 22, 1953, which provided concerning payment for the installation of smog equipment:

“A deposit of 10% of the above quoted amount is required upon execution of Contract, the balance of which is payable upon receipt of the Los Angeles County Air Pollution Control District Permit to Operate.” (R. 802).

Such smog control units were installed in two of the apartment houses as shown by Exhibit G, the Permits to operate them (R. 805). The Permit for the apartment house at 418 South Normandy was issued March 9, 1954, and for the apartment house at 1746 North Cherokee Avenue, on June 2, 1954 (R. 805).

Other facts involved in the Order distributing funds pertain to:

Paragraph Four of the Settlement Agreement (R. 140) required the parties to stipulate to an Order and the Court did make an Order terminating the Receiver's active powers as of 5:00 p.m. Sunday, February 28th, “excepting money in bank and under the control of the said receiver . . . ” The record shows the Receiver's performance concerning these moneys, as follows:

A. *A petty cash fund in the possession of the managers of the five apartment houses.*

The Receiver testified (R. 420), that the managers were his agents; that a petty cash fund in the amount of \$785.00 was under his control.

“Q. You did not take possession of that \$785.00 — you left it with the managers, is that correct?

A. That is correct. For one reason. That reason being that that was a part of their working properties of the building.

Q. So far as you know, Mr. Hallberg, the Plaintiff, Lyda Tidwell, or her Agent, Mr. Udal, or someone of her agents, still have that \$785.00, is that right?

A. So far as I know, Yes, they have what represents \$785.00, either cash or receipts."

B. *Rentals Collected Before 5:00 P. M. on February 28, 1954.*

In addition, the Receiver failed to collect the rents for the three days February 26th, 27th, and 28th, 1954. He testified (R. 418):

"Q. Did your attorney also inform you that you were to only retain the money in the banks and under your control?

A. I believe he did. (R. 419)

Q. You have already testified concerning the \$2,000 figure shown on page 12 of the Petition, that is, the receipts for the days of February 26, 27 and 28, 1954?

A. That was an approximate, it was an estimate, it isn't factual.

Q. Well, it was your best judgment when you verified the Petition?

A. That is correct.

Q. And based upon your acting as Receiver in this matter, have you made an audit since then to ascertain the amount or done anything?

A. No.”

An investigation was made by Appellant Richman to ascertain the amount. He testified (R. 683), that the amount of rents collected on February 26, 27 and 28, was \$1290.59. The managers of the apartment houses had this amount at 5:00 p. m. on February 28th and later paid it to Appellant Tidwell.

The April 12, 1954, Minutes of the Court (R. 157) state:

“It is ordered that the issues of payment to receiver and his attorney is set for trial May 11, 1954, 9:30 a.m., and it is further ordered that issue of balance of remaining moneys by the Receiver after payment of his fees and his attorney’s, is set for pretrial hearing May 14, 1954 10:00 a. m.”

The trial fixing the fees was had from time to time on May 12, 13, 14, 17, June 7, 8, and 18, 1954. On June 18th the Court inquired (R. 774):

“Can you go forward with the pretrial matter of the Tidwell v. Richman phase of this case on Monday afternoon?”

“Mr. Camusi: Yes, that is wonderful. I was going to ask if I could be excused at 11:00. I have a matter I just can’t put over.

“The Court: We will continue this phase of this hearing until Monday afternoon.”

A pretrial was had on June 21, 1954 (R. 782-817), at which time Appellant Richman introduced in evidence Exhibits A, B, C, D, E, F, G, and H, heretofore stated. It was stipulated (R. 809) that Appellant Richman’s fees as agent for the Trust for the month of November,

1953, in the amount of \$3,104.13 had not been paid. The Court then stated (R. 809), that it appeared issues of fact remain which would require trial unless the parties could stipulate. Appellant Richman offered to forfeit a smog equipment item of \$58.80 rather than go to trial, leaving only a then believed issue of proration of rents (R. 810). Thereupon argument in support of Appellant Richman's objection to the receiving of parol testimony concerning prorations to vary the terms of the written Settlement Agreement and Escrow Instructions was made. The Court ruled:

“The Court: The Court sustains your objection. I think parol evidence takes care of it, the parol evidence rule, I mean.” (R. 812)

Thence the Court set aside the ruling (R. 813), and the pretrial was adjourned.

The next proceeding occurred September 27, 1954, which the Court opened by stating (R. 817):

“It has been a long time since we were all here in this case, but, as I recall it, this is the day for the final, final argument on the subject of settlement of the Trustee's account or, rather, the Receiver's account.”

Again Appellant Richman's objection to the receipt of evidence upon the question of proration upon the ground that such evidence would vary the terms of the written Settlement Agreement, were made (R. 819-828), with the closing statement:

“That is the only means by which I say we can avoid an expensive trial.”

Thence Appellant Tidwell's argument in support of evidence upon her claims for escrow expenses and as to proration it was asserted (R. 835-837):

"As to the proration of the rents, I think these managers' reports for the five apartment houses will show when the rent was due, and when it was paid, so that in that sense it can be seen that during the month of February certain rents were collected which were properly for the month of March. And I would like to offer those into evidence, together with these utility bills.

"I noticed in the transcript that Mr. Enright said we might introduce the utility bills into evidence, and I offer those exhibits at this time.

"Mr. Enright: To which objection is made upon the grounds heretofore argued, and heretofore stated, and if such documents are received in evidence, of necessity there will be created an issue as follows:

"Concerning the real-property taxes, which are claimed to be some \$4,000.00, if proration is to occur, of necessity there will have to be proration of the personal-property tax claims paid by Mr. Richman on personal property on a much larger sum.

"Second, as to the rents received by the managers before March 1st, which under the court order were to go to the Receiver, and which in fact were picked up by Mr. James Udall, there is no dispute in the evidence concerning those, in the amount of \$1,290.59, it can be prorated, and then, of necessity, you must look into the rents, the delinquent rents, that were collected in March, because if we are going to prorate, we will have to

prorate both ways to be equitable and fair.

"Thirdly, if we are to prorate utility bills, these bills here, this bundle of bills show errors in mathematics.

"Fourthly, it shows right upon its face that they are attempting to charge Mr. Richman with long-distance phone calls, and similar charges.

"Also, I submit that the tenants pay when they get their bill for their month's rent, and they would have paid in March.

"And there are a lot of details of questions of fact, and if we are going to entertain some implied covenant to prorate, or some implied custom to prorate, when we have this express contract, I submit that if we try the matter we will take at least a number of days to hear it

"The Court: Sustained. Just a moment

(Another case called.)

"The Court: Proceed.

"Mr. Camusi: I don't know what that ruling means. If it means your Honor does not care to take evidence at this time, and you are to decide an accounting should be had, that is perfectly agreeable to us, but I hope it does not mean your Honor has ruled before I shall have made my argument as to what the law is on this issue in the case.

"The Court: If on the main contention I should ultimately decide you are right, we will refer the whole question to a Master for the taking of evidence.

"Mr. Camusi: I see.

"The Court: But I think at this time that you are bound by the agreement.

"Mr. Camusi: Oh, that is my point, your Honor."

The approximate amount of taxes for the period January 1st to February 28th, were ascertained during the June 21st pretrial, no utility bills were marked for identification and no evidence was received to support these claims. The Court, upon this state of the pretrial record stated: (R. 842)

“I will take it under submission and give you a decision rather quickly.”

On October 5, 1954, the Court issued a Memorandum to Counsel re disposition of funds under control of Court and allowance of fees (R. 182-188). Appellant Richman's claim for his fees as agent of the terminated Trust, in the amount of \$3,104.33, being a certain 10% fee as fixed by the Trust Agreement, was reduced to 6%. Concerning escrow expenses the Court stated (R. 183):

“Plaintiff has stipulated in the Escrow Instructions that all of the seller's costs and expenses of escrow, revenue stamps and recording be at her expense. She cannot now avoid that written understanding by claiming inferences from an agreement that do not clearly flow from that written agreement.”

At (R. 186) concerning the same Escrow Instructions which provided no proration the Court stated:

“The Court finds that real property taxes were an operating obligation of the Trust, whereas Mrs. Tidwell was to assume and did assume the operating expenses of the Trust after a tax item in the sum of \$4,952.77 had accrued even though the bill-

ing date had not arrived, it is proper that she be reimbursed for what she has paid out of her own funds in payment of operating expenses which had arisen before she acquired her fee simple title and assumed by express agreement the operating expenses as of a date after the same period in question."

Likewise (R. 184) the Court directed the utility bills in the amount of \$1877.50 (there being no evidence to support the amount even at pretrial), to be paid out of the funds in the possession of the receiver; determined that cash in the hands of the Managers, Receiver's Agents, representing the rents for February 26, 27 and 28, were a part of the assets being purchased by Appellant Tidwell; determined (R. 185) that smog units contracted for before the Receivership partially or entirely installed during the receivership, on which payment was to be made upon issuance of Permit, were to be paid out of the funds. Likewise, the \$785.00 cash fund (R. 185) in the possession of the managers, being agents of the receiver, were assets of the Trust to be retained by Appellant Tidwell. The facts as to the fees ordered paid will be considered hereafter. On November 19, 1954, the Court signed its Order (R. 190) carrying its decision into effect. Appellant Richman has appealed from this Order. (R. 196)

II.

TRIAL COURT'S JURISDICTION RE APPELLANTS' SETTLEMENT AFTER RECEIVERSHIP.

Appellant Richman in his Answer and Objections to the Account of the Receiver and Petitions for Fees,

pleaded (R. 137) that the Receiver by virtue of the Court Order of February 26, 1954, was required to account to 5:00 o'clock P. M. February 28, 1954. The moneys remaining in the possession of the Receiver were subject to the directions of the Appellants -

“ . . . and, in the event they (Appellants) cannot agree upon their distribution then each is entitled to apply to a court of competent jurisdiction to initially and originally determine their respective rights.” (R. 138)

Appellant Tidwell filed a Memorandum with the Court contending that the Trial Court had the power to dispose of the remainder of the funds under the control of the Receiver. (R. 154). On April 12, 1954, the Trial Court, when setting the hearing upon the accounting also set the question of distribution of the funds for pretrial for another date. At that time (R. 245), for Richman it was again stated:

“Your Honor, I again point out that this Court does not have jurisdiction of a Contract made by Lyda Tidwell and Frederick Richman on February 25th, 1953.

“Mr. Camusi: Let's argue that at the pretrial.

“The Court: That would appear *prima facie* to be so.”

During the trial upon the Receiver's accounting Appellant Richman again pointed out that the Trial Court had power, at most, to charge the fund in the hands of the Receiver because he failed to retain control or possession of the petty cash fund of \$785.00 and

the rents for February 26th to 5:00 o'clock P. M. February 28, 1954, in the amount of \$1290.59, which were admittedly obtained and were in the possession of the Appellant Tidwell, and further find that the Receiver had on February 27, 1954, made a payment for the benefit of Appellant Tidwell in the amount of \$2027.25 contrary to the Court's Order of February 26, 1954. (R. 685-686).

III.

STATEMENT RE FEES—CONDUCT RESULTING IN GROSS ABUSE OF JUDICIAL DISCRETION.

A. Representations—Receiver's Ability, Experience Availability.

On November 30, 1953, the Trial Judge rendered its decision upon the merits in the main action on the issue of fraud or undue influence in the inception of the *intervivos* trust. (R. 220). It determined the Trust should be terminated because of statutory undue influence. The attorneys for the parties were called to the Court's Chambers, the decision delivered and the Court announced its intention to appoint Roy E. Hallberg Receiver. It stated:

“Mr. Hallberg was for some years associated with a property management operation in Chicago, and has considerable acquaintance and experience in that type of work. Since coming to California he has held various positions with different types of corporations and has been engaged in the management of property for elderly relatives who have considerable apartment property in Southern California.

"I called him and found that he is available, and I asked him to come in here at about 2:00 o'clock today so that counsel could meet him." (R. 205)

The Court continued:

"I have known Mr. Hallberg in a rather off-hand way for some time, but he is not a particular friend or even a close acquaintance, although his name has come up in connection with the consideration of other names." (R. 206)

Mr. Hallberg was called to the Chambers of the Court, and the Court stated:

"The Court: Just have a chair, Mr. Hallberg. The court has now given its decision in the matter, which I discussed with you last week, and I have asked counsel if there is any objection—of course, the defendant feels no doubt that he should have won the case, but since a receiver is to be appointed—whether they have any objection to you as the selection of the court as receiver.

"Now, they haven't announced any objection, but they don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some years was in the management of real properties, sometimes in connection with court receiverships, and that your experience in it locally has been in the management of your own real properties, which were of income nature, and of similar properties owned by either you or your wife's relatives.

"Mr. Hallberg: That is correct.

“The Court: Now, if counsel wish to question Mr. Hallberg before the appointment is actually made, the clerk will swear him, and you may ask any questions you wish.

“Mr. Enright: On behalf of the defendant, your Honor, I am in no position at this time to interrogate this gentleman. I am satisfied that your Honor would not have selected anyone except a man of not only integrity, but of ability. But my objection goes to the proposition of the appointment, your Honor, and I will seek, and now seek time to consider what steps are required under the procedural requirements of this court to bond against his appointment at this very day, or as soon as I assume the order can be drawn. You see, your Honor, my basic position is that I do represent a member of the bar, and I do represent a person who, I submit, under all the evidence has never taken one red cent from this trust, from the date of its execution and for years before in the operation of this joint venture.” (R. 209-211).
The Court stated:

“The Court: I think it is not appropriate for the defendant to remain longer in control as trustee, for several reasons which do not reflect upon whether or not he has been taking money from the trust. I don’t understand that there is any charge that he has ever stolen anything. Of course, there is an action for an accounting based upon various grounds, which we need not enumerate here, which include, among other things, that he has allowed, I think, excess fees to himself. Is that not it?” (R. 212)

Concerning the proposed Receiver's place of business it was stated by the Court:

"I am going to suggest to Mr. Hallberg, who I think has a place of business somewhere around San Gabriel or San Marino, or South Pasadena,—

"Mr. Hallberg. It is in Pasadena.

"The Court: And you live at Corona del Mar?

"Mr. Hallberg: That is correct." (R. 215)

Richman's objections to the Receiver's Account and Petition (R. 125), and a Petition to Disqualify the Trial Judge (R. 158), raised an issue as to the experience and availability of the Receiver and the unclean hands of the Receiver, arising out of these representations. On December 1, 1953, Richman requested that the amount of supersedeas bond to stay appointment of the receiver be fixed (R. 216). The Court was advised that the Receiver had, without qualifying, taken over a bank account and was demanding and collecting rents collected by the managers be turned over to him, and the Trial Judge stated to Richman's counsel:

"The Court: Mr. Wyatt, I think perhaps the concern isn't quite as imminent as you have been led to believe. The receiver hasn't brought up the bond." (R. 216).

and:

"The Court: The bond will have to be approved by the court and he isn't entitled to take over any estate, under the rules, that are in this district, until he has posted a bond and taken the oath." (R. 218).

The Minutes for December 2, 1953, (R. 30), show that the bond was presented and approved on that date. Richman's Motion to fix supersedeas bond was on the same day continued until December 3rd. On December 4, 1953, the Court's Minutes show that it refused to fix supersedeas bond. (R. 32). The Receiver's attorney's testimony disclosed the following concerning the Receiver obtaining his bond:

“Q. (By Mr. Enright): Please read your time slip of December 2 about getting qualified. (346)

“A. I will be glad to. The time slip for December 2—this is Mr. Fitzpatrick's time slip—‘Hallberg came in at 9:00 a.m. re his bond as Receiver. I telephoned Hecht at F & D. He said that he had been asked last night by Richman to put up a supersedeas bond on appeal. That if a writ of supersedeas were issued we might not be able to collect the premium on our bonds out of the assets of the receivership.

‘He therefore wanted to wait until the issuance of the bond, to see if a supersedeas were issued. I reported this to Mr. Hallberg. We agreed to wait one hour.

‘After a while Hallberg suggested that he talk to Judge Tolin's secretary. He called her, but got Judge Tolin, who said to get the bond in right away and he would see that the premium was paid out of the receivership assets.

‘I phoned Hecht and told him that if he weren't able to issue the bond we would get it elsewhere. He then asked if it was O. K. for him to telephone Judge Tolin and I said yes.

'He called back in a few minutes and said he would issue the bond. I gave him the title of the court and cause, and Hallberg went over to his office to get the bond. Whyte came in and I reported to him what had happened.' '' (R. 555-556).

On January 15th, a Petition of the Receiver for authority to expend moneys in renovating, etc., the apartment houses, came on for hearing, and for Richman it was stated (R. 231):

"One of our problems is that we have no knowledge of Mr. Hallberg's experience in the particular field, other than what your Honor told us the day he was appointed. We would appreciate Mr. Hallberg going over his problems, if he will, to some degree with Mr. Richman from time to time, if that meets with the approval of the parties, because that is the only means we can have.

"May I say, second-guessing Mr. Hallberg's judgment in shifting sinks in the Western Arms Apartments, which our answer shows is rapidly becoming a changed district, . . . (R. 231).

The Court had explained the then cooperative circumstances in the following words:

"I understand, by being cooperative with the Receiver, nothing has been waived, and I appreciate the fact Mr. Hallberg, on occasions when he has seen me, has told me of very nice cooperation that Mr. Richman has given him in regard to matters where they have had occasion to work together, saying that even on some occasions Mr. Richman has gone beyond the mere request which

the Receiver had made for information and had given positive cooperation on a voluntary, very useful basis." (R. 221)

The Court's Memorandum Decision of October 5, 1954, stated (R. 187):

"Mr. Richman, with whom he had to deal, is a person given to hostile and aggressive attitudes. It is evident that he exercised these in his relations with the Receiver."

Richman could not contact the Receiver after December 18, 1953. (R. 537-538).

B. Petition To Disqualify.

The Settlement Agreement of the Appellants, their Stipulation relieving the Receiver from active duties except his retaining the money in the bank and under his control, occurred in February, and by April 12th, issues had been joined by the Accounting, Petitions for Fees, and Objections. The Minutes of April 12th, (R. 157), record the following:

"The Court makes a statement that no evidence will be taken concerning the appointment of the Receiver in this action"

and the accounting was set for hearing on May 11th, 1954. On April 30, 1954, Appellant Richman filed a Petition with the Court requesting that the Trial Judge disqualify himself from hearing the Accounting and Petition for Fees, upon the ground the Trial Judge was a necessary witness to the misrepresentations of the Receiver as to his experience, qualifications and availa-

bility; (R. 158); that the Trial Judge would be required to testify concerning these allegations. The Trial Judge did not act upon the Petition. The issue of the Receiver's unclean hands, arising out of his misrepresentations, resulted in the Court ruling and stating:

"You can't call the Court on that subject. We are not going into it any further. It is closed."
(R. 456).

Under these circumstances Appellant developed the facts involved in the issue of the representations made by the Receiver. (R. 417-461).

C. Receiver's Availability and Earnings.

Concerning Receiver Hallberg's availability to act as Receiver and manage the five apartment houses, being the principal assets of the Trust, the record reveals the following: Before December 1, 1953, he had taken an examination to be an employee of the County of Orange (R. 326). He was advised on Wednesday, December 2nd, or Thursday, December 3rd, 1953, that he would commence work on December 7, 1953 (R. 357), as a permanent employee (R. 356), at a salary of \$355.00 a month (R. 328). The record is replete (R. 326-342 and 871-922 (Deposition of Hallberg)), with the effort to ascertain Mr. Hallberg's County of Orange hours of employment, previous experience, and previous compensation as bearing upon a reasonable fee for this receivership. The Court's questions (R. 338), developed that the Receiver was, during the receivership commencing December 7, 1953, working an average of eight

hours a day on a five-day week for the County of Orange. The Receiver (R. 361) did not advise the County of Orange he was appointed a Receiver by the Federal Court. He stated he had some other commitments. He did not advise the Trial Judge (R. 363) of his contemplated County of Orange employment when he took his oath on Wednesday, December 2nd. He told no one he was going to be employed by the County of Orange because he intended to delegate his receivership duties to his "Secretary", Miss Cosgrove, the maiden name of his wife (R. 380). He introduced Miss Cosgrove by the name "Miss Cosgrove" to Edna Lipphardt, manager of one of the apartment houses as his "right hand", stating that Miss Cosgrove would supervise the building. (R. 504). Another manager, Maude Kennedy, saw the Receiver on three different occasions during the receivership. (R. 469, 476, 477). Miss Cosgrove testified (R. 526) that she phoned the Receiver at the Orange County Assessor's office when a problem arose concerning the breakdown of the refrigeration in one of the apartment houses.

"Q. Had you ever told Mr. Harrison (a book-keeper of the Receiver), or anyone else that they could reach Mr. Hallberg in Mr. Byram's office (County of Orange)?

"A. I had not.

"Q. So far as you know no one knew that Mr. Hallberg could be reached at Byram's office, the County Assessor's Office, excepting yourself, is that right?

“A. That I am not sure of; possible.”

Witness Barney Manalis (later referred to again) testified (R. 702), that he tried to contact the Receiver quite a few times but never successfully. Richman testified that he was never able to contact the Receiver. (R. 719). On December 18, 1953, the Receiver was absent from the County of Los Angeles and his attorney verified a Petition for an Order authorizing payment of Christmas bonuses to the managers of the five apartment houses and other employees. (R. 34). The Receiver testified that during the period September 5th to October, 1953, he was employed by Narmco Corp., a fishing pole manufacturer, at a salary of \$350 a month. (R. 364). That from May to December, 1951, after he had made an investment of \$18,000 in Morgan Construction Company, a corporation, he had a weekly drawing account of \$100.00. (R. 365). That he came to California in 1947, for the Refrigeration Corporation, but it “got into financial trouble” and then he had trouble with his back, “so my employment record is a little confusing from that point on, . . .” (R. 875). On May 29, 1947, he purchased a lot at 85 Glen Summer Road and built a house on it, then another lot at 90 Glen Summer Road and a house on it; he sold the last house on June 17, 1952 (R. 367). He lived there until about 1952. The Trial Judge lived on the same block on Glen Summer Road at the same time. (R. 430). He testified that from 1932 to 1947 he was employed by Garrett Company in New York as a wine salesman and that he had earned as much as

\$40,000 a year (R. 368). He quit this employment to come to California. During the period December, 1949, to November, 1950, he owned a 16 unit apartment house at 1509 Fair Oaks, Pasadena. The only experience he had with properties in Los Angeles County was the Glen Summer Road houses, a four-unit flat, one furnished, at 507 El Molino Street, Pasadena, and the 16-unit apartment house. (R. 370). The only business address he had was Morgan Construction Tooth Company (May to December, 1951), except that he explained his answer to the Trial Court on November 30, 1953, concerning a business address in Pasadena, that he received mail at the flat. This flat was rented at the time (R. 377). That before being employed by Garrett Company in 1932 he had been employed for about one year by a bondholder of certain bonds secured by Chicago income property, issued by a Chicago bank; one Chicago hotel was similar to the Richman apartments. (R. 381). Mrs. Hallberg explained her experience (R. 515-527), that she had graduated from the University of Minnesota; that in approximately 1939 she attended evening classes two or three times a week at the Traphagen School of Design in New York City when she was employed by Investment Counselors Johnston & Longquist; she met and married Mr. Hallberg in 1940, decorated their New York home, decorated Glen Summer Road residences and was a housewife until the receivership.

The Receiver, Hallberg, testified:

“Q. Now, Mr. Hallberg, when you were appointed Receiver and within the two or three days

after your appointment, and I assume December 2nd as your date of appointment,—we had better go back to December 1st—that was the day, I think you went around to some of the apartment houses. During the first three days, did you introduce anyone to the managers as being your agent?

“A. Yes.

“Q. What did you tell the managers?

“A. I introduced Miss Cosgrove.

“Q. What did you tell the managers?

“A. I told them she was going to act for me.

“Q. In the—

“A. In the management, yes. And anything she wanted (206) would be under my instructions, and they were to follow it.

“Q. You did not later inform the managers that Miss Cosgrove was your wife, did you?

“A. I didn't see it was necessary, for the simple reason that she preferred acting as Miss Cosgrove.

“Q. You did not inform Judge Tolin you intended to delegate your operation of these five apartment houses to your wife, did you?

“A. I did not inform him that I was going to hire any assistance, or, in fact, we had no conversation about the assistance I was going to require.

“Q. You did intend to do this very thing when you were appointed Receiver, didn't you?

“A. If it required it.

“Q. You did, in fact, perform your activities as the Receiver by receiving reports from Miss Cosgrove?

“Mr. Whyte: Oh, objected to as going far beyond the evidence adduced here. The witness has testified as to what he did. His own personal activities, as to a Receiver, went far beyond receiving reports from Miss Cosgrove or Mrs. Hallberg. It assumes facts completely contrary to the facts.

“The Court: Overruled.

“Q. (By Mr. Enright): You did, in fact, Mr. Hallberg, especially—or, commencing December 7, 1953, rely upon Miss (207) Cosgrove in performing activities involved in the management of these five apartment houses?

“A. I didn't hear everything you said there.

“Mr. Enright: Read the question.

(The question was read.)

“The Witness: I relied on some of her activity, that is true.

“Q. (By Mr. Enright): Actually, the physical method of operation was that commencing December 7th and all through February 28th, and you would make trips up to Los Angeles on the weekends or come up Friday night after completing your work for the County of Orange, isn't that right?

“A. I came up during the week. I came up Friday, it is true. I was there Saturday. I was even there on Sunday.” (R. 433-434).

The Receiver's direct testimony more clearly describes how he performed his duties in managing five apartment houses of over 400 units, being substantially all the assets of the Richman trust.

D. Receiver's Services.

The Receiver testified, in giving his deposition, that he would come from Orange County where he lived and was employed to Los Angeles on weekends, Saturdays and Sundays, and some evenings to render his services as Receiver. (R. 445-446). At trial he explained that he came to Los Angeles during some week days.

At the Court's suggestion the Receiver occupied one of the apartments in one of the apartment houses. He employed a Mr. Harrison from Monday through Friday to keep the books and left instructions for Mr. Harrison in writing on occasions. (R. 446). A diary, Exhibit “B” (R. 393-404) was kept by the Receiver and he testified concerning the entries:

“Those entries were made in the evening after we both returned home. It was a composite of the work, for the most part, that was accomplished during a particular day.” (R. 389-390).

Miss Cosgrove made the trips to Los Angeles, collected the rents from the manager and deposited them

in the bank. He explained (R. 264-265) that she handled the:

“decorating, purchasing of material, and overseeing the operations of the actual refurnishing of some of the apartments . . . she represented me in a good many of our contracts with service people, with the managers, with the various tradespeople we had to deal with . . . She performed various duties. Among them was overseeing the decorating of a lot of these apartments. She made periodic trips every other day, practically, to the various apartments and picked up the monies that were on hand and collected by the managers.” (R. 268)

The Receiver’s rendition of services other than delegating to Miss Cosgrove is best ascertained by reference to the record.

On December 1, before he qualified as Receiver he and his attorney, who had yet to be appointed by the Court as Attorney for the Receiver, took over the Trust’s bank account at the Union bank and called at the apartment houses and took possession of rent monies. (R. 552). On February 25, 1954 he had a conversation with his attorney regarding a conference he was to have the following day with the Court concerning appellants having settled their law suit. (R. 417). He testified that on the evening of February 26, he had a conversation with his attorney:

“Q. And at that time you were advised by your attorney that the Court had made the order

of February 26, 1954, relieving you of your active duties of management?

“A. That is correct.

“Q. Of the five apartments, or the Trust assets?

“A. Yes.

“Q. Did your attorney also inform you that you were to only retain the monies in the banks and under your control?

“A. I believe he did.” (R. 418)

The stipulation of the parties and the Court's Order directed him to collect rents and retain money in bank and under his control until 5:00 o'clock P. M. on February 28th. He failed to collect the petty cash fund in the amount of \$785.00 in the possession of the managers. (R. 419). He estimated, when accounting, that rents in the amount of \$2000.00 were collected by the managers on February 26, 27 and 28 (other evidence established the amount as being \$1,290.59), and he did nothing about it. (R. 419). The Court's decision of October 5, 1954, explains that the Receiver even after the February 26th order did on February 27, 1954, assume that he would remain in possession and was justified in believing that he should make payment due March 1, 1954, upon a trust deed installment secured by one of the apartment houses. At R. 423, the Receiver's testimony reveals that he had made the payment on February 27th, after being informed by his attorney on the 26th of order made on that day, al-

though the January 1st payment was made on January 18th (R. 630) and the February 1st payment on February 9th. (R. 631).

On Sunday, March 7, 1954, the attorney for the Receiver testified that he was at the Receiver's home at Corona Del Mar after a golf game. After dinner the Receiver Mr. Hallberg and Mrs. Hallberg (Miss Cosgrove) discussed the problem they had concerning creditors' bills or statements that were not received until after March 1st.

"Mr. Hallberg telephoned Judge Tolin in my presence and put the problem to him. I then came on the 'phone. . . I explained that I had contacted the attorneys for the plaintiff and defendant and Mr. Enright objected to the Receiver paying those bills and that Mr. Camusi was agreeable that they should be paid by the Receiver. Judge Tolin then and there instructed me to pay those bills, that is, that the Receiver should pay those bills and those payments are evidenced by the schedule attached to the Receiver's Report here." (R. 545).

E. Accounting Services and Experiences.

The Receiver testified concerning these services in support of his fees that he had set up a new bookkeeping system. He testified in his deposition that he, when in college at Chicago, did part-time accounting while in school (R. 911). At the trial he testified that he had two years accounting experience in Chicago (R. 737); he left there to go to work for Garrett Co. about 1932.

During the week of December 1, 1953, he took over Mr. Richman's five apartment managers as his employees and also employed Mr. Richman's secretary-bookkeeper, a Mr. Harrison. (R. 537). Mr. Harrison had kept the Richman Trust books during the period May, 1952, until December, 1953, for Mr. Richman. The Court rules required the Receiver to file an accounting within 60 days, or about February 2nd, 1954. The attorney for the Receiver filed an Affidavit in support of an Order extending this time (R. 45), stating that the attorney was not available to counsel with the Receiver and his bookkeeper Mr. Harrison during the week January 24th. The Court made an Order extending the requirements of the local Rule 18(b) for a 60 day accounting to March 20th, 1954. Bookkeeper Harrison was discharged at about the same time as this Court Order and Affidavit. The discharge occurred at the time the bookkeeper was interviewed by Mr. Richman concerning the Air Pollution criminal citation hereafter set forth. Thence the Receiver employed a bookkeeper named Findeisen. The Receiver never called either bookkeeper to explain why it was that the books were as incomplete as shown by the testimony of Richman (R. 689-700). The nature of the accounting as shown (R. 104-121), reveals the bookkeeping problems, if any, in the keeping of records of receipts and disbursements for the five apartment houses. The amount of money, if any, that should be allowed the Receiver for his college part-time or Chicago 1931 bookkeeping experience is in dispute.

F. Refrigeration Break-Down.

Maude Kennedy, the manager of the Western Arms Apartment House, testified that the equipment furnishing refrigeration to the apartments failed February 16, 1954, and she tried on the 17th, 18th, and 19th to contact Mr. Hallberg. On the evening of the 19th Miss Cosgrove called and asked if she was attempting to get in touch with Mr. Hallberg. That by the morning of the 19th, 21 of the apartments were without refrigeration. The Receiver's diary (R. 403-A) contains a note under the date of the 19th.

"To W. A. re refrigeration John Dougherty."

The Receiver explained (R. 441) that Mrs. Hallberg did not report to him on the 16th, 17th, or 18th, this refrigeration failure, and stated:

"At this time, no, because the refrigeration service company would have automatically been called."

He could not recall this failure being reported to him and stated:

"I do not believe it had been reported. However, I cannot recall exactly because there is no mention in my diary here."

In response to the Court's questions concerning the Receiver being able to:

"recall how much time you gave Orange County during the two days that elapsed, from the time

the emergency arose and the time you arrived there.”

“It is pretty hard at this time to state. I do know I went in there and as far as the actual work on the unit was concerned, the men were more capable than I was of doing the required amount of repair; my being there wouldn’t have helped any.”
R. 436-437).

Miss Cosgrove testified she phoned Mr. Hallberg at the Orange County office; she had not told anyone he could be reached there. (R. 526)

G. Air Pollution—Criminal Citation.

Appellant Richman delivered to the Receiver the letters and file pertaining to Exhibit F. (R. 801-803), the contract for the installation of an air pollution control unit about December 5, 1953. (R. 636). Barney Manalis, an agent of the contractor with whom the contract was made to install the unit testified that after attempting to contact the Receiver, Hallberg, several times in December, without success, was advised by Roy Harrison (the Receiver’s bookkeeper):

“He advised us at that time that as the Federal Receiver for the apartment house he was not bound to the contract and to hold up and do nothing.”
(R. 702)

The timesheet of the attorney for the Receiver and testimony show (R. 556), that on December 27th, he spent .3 of an hour in the

“Examination of files with reference to installation of incinerator equipment for Canterbury and Oliver Cromwell and liability of Receiver to carry out contracts for such installation.”

He testified he advised the Receiver that contracts were valid and binding and that they should be carried out, and that the balance of the 90% purchase price was not to be paid until after the installation had been performed and permit issued by the Air Pollution Control District. (R. 557). On January 13, 1954, Exhibit 4 (R. 711), a Citation for violation of Air Pollution Control District—Los Angeles County, was issued. Witness Manalis testified that about a week before January 22, 1954, he received a call from Mr. Harrison who advised a Citation had been issued and to proceed with the work. Manalis advised Harrison that they could not proceed with the work until the blueprints that the Pollution District had approved had been returned to him. Miss Cosgrove testified that she heard Mr. Hallberg tell Mr. Harrison about January 13th, to attend to the Citation issued by the Smog Control District. (R. 519). The receiver admitted that he saw a Memorandum dated December 22nd, reporting that installation of the smog units were in suspension. (R. 744). The drawings were transmitted by Mr. Richman to Mr. Hallberg on December 7th. (R. 648). On January 22nd, Hallberg came to the office of the Receivership at the Oliver Cromwell Apartment House and went through his briefcase and found the drawings. (R. 642). On January 22nd the Receiver dictated and caused to be transmitted the January 22, 1954 letter requesting

Manalis to proceed to install the units. (R. 646). At (R. 753) the Receiver explained that after January 13 he requested Harrison to deliver the blue prints right away. A criminal complaint was filed with the Los Angeles Municipal Court and Citation issued for the manager of one of the apartment houses and Mr. Richman. Miss Cosgrove had done nothing concerning the Citation and when the criminal complaint was filed on January 27th, she went out to Mr. Gordon Larson's office (Los Angeles Smog Control Director). (R. 521). The criminal complaint required appearance in the Municipal Court on February 1, 1954. The attorney for the receiver left a telephone message at appellant Richman's office between 4:00 and 5:00 p.m. on Friday, January 29, 1954 that Mr. Richman was named as a defendant in a Criminal Complaint with reference to the incinerator at the Oliver Cromwell, that a hearing was to be held the following Monday at 9 a.m. (R. 407). Richman, his attorney, and the attorney for the Receiver appeared on February 1st and upon request by the attorney for Richman, criminal proceeding was continued and, finally, the City Prosecutor requested dismissal after the Receiver's attorney assured him the equipment was being installed.

H. Receiver's Fees.

The Petition of the Receiver prayed for reasonable fees. The District Courts Rule 18 (c) (4) requires a Receiver's Petition for fees to "show in what amount . . . fees will be asked for." The Court explained upon the first day's hearing

“The Court: The court should note for the record here that when the Receiver was engaged in the preparation of his report either Mr. Hallberg or Mr. Whyte—I don’t recall which one—called me and said, Do we have to set forth a particular amount or may we leave it to the discretion of the court and ask for a reasonable fee?”

“I told them I would like for them to set forth in detail what had been done and if they wanted to leave it to the court to determine a reasonable amount that the court would not insist upon compliance with the rule that an amount shall (15) be prayed for. But they could leave it as reasonable or they would state a specific amount.

“I was then told that Mr. Whyte felt he ought to put in a specific amount, which he did, and that Mr. Hallberg preferred to leave his to a prayer for reasonable amount.” (R. 254)

Objections to the Receiver’s Petition had been made upon the ground that it did not comply with the Court rule specifically requiring a Receiver to set forth the specific amount he desired to be paid as fees. The Court inquired from the attorney for Richman what fee Richman felt should be allowed for the Receiver. (R. 256). The attorney explained (R. 258-261), the problems appellant had in determining what would be a reasonable fee and concluded:

“I would like to hear the man say what he feels he is entitled to for his weekends or his trips up here.”

Thereupon the Court stated:

“We had better take full evidence on what he did.” which resulted in several days trial. (R. 261).

At the end of the first day's hearing on May 12th the Court Stated:

“We will begin this case tomorrow at 11:00 o'clock. Please let's not try to make a career of it. It is the sort of thing that should have been over by now. It is the sort of thing that is customarily handled on a Monday motion calendar.” (416)

Thereupon counsel for Richman inquired from the witness Roy E. Hallberg, Receiver:

“Q. How much compensation do you personally feel you should receive, Mr. Hallberg?

“A. Well, in my Petition I am leaving that entirely up to the Court.”

Appellant explained his dilemma to the Court, arising out of the Receiver not stating what fees he would consider satisfactory, as required by the rules, and the attorney for the Receiver petitioning for \$3,000.00 ordinary fees and extraordinary fees, without specifying the amount, whereupon the court assumed responsibility for the Receiver failing to specify the amount of fees he desired. (R. 624). After the Court had rendered its decision of October 5, 1954, awarding the Receiver \$6,000.00 fees and his attorney \$1,000.00, another hearing was had at the request of the Court, in its Chambers, on October 12th. (R. 843). After the Receiver's attorney explained why \$1,000 was unreason-

able and that \$3,000.00, plus extraordinary fees would be reasonable the Court stated concerning Mr. Hallberg's fee:

“Now, Mr. Hallberg asked for less than he got out of the Court. I increased, not the prayer of his petition, but the tenor of his testimony, because I felt that he had not given any account to the element of having to account so fully in court, as well as by the accounting which he had prepared and filed.

“He was brought before the court almost as if he were accused of a crime here and was treated by some of the parties to the suit, or by one of the parties to the suit and one of the attorneys to the action with less respect than I have seen embezzlers treated when I was handling the criminal calendar of the court.” (R. 858-859).

Appellant was never informed as to what fee Receiver Hallberg desired other than he would rely upon the Court to fix a reasonable fee. Appellant established the facts in the Court, presents them to this Court in an effort to determine a proper fee, for this Receiver, who has as yet to state what amount of fee he is asking for under Rule 18(c)(4).

During the October 12, 1954, presentation by the attorney for the Receiver seeking additional attorney's fees, the Trial Judge stated concerning the Receiver's fees:

“The Court was interested, however, that the expense of a brief court supervision of these properties, pending what was then determination of an

appeal, or it was a promised appeal then, or the possibility of settlement, the court was interested that the court's administration of the property should not be so costly as that which the court has found was excessive. I expressed that to everyone in the case." (R. 858)

Appellant Richman's administration of the property under the Trust from November, 1945 to December 2, 1953, resulted in an increase in value from \$375,000 to \$1,200,000. (R. 603-604). He had been operating the assets under the name Nagel-Richman during the period 1936 to 1945. He had operated apartment buildings for banks and trust companies commencing about 1932. (R. 602-603). He contributed one-half the assets of the trust. Richman's compensation under the Trust Agreement was fixed at 10% of receipts, exclusive of capital assets. The Receiver's report showed total receipts of \$94,153.59, which included \$377.35 being "other" than rents receipts or rental collections in the amount of \$93,776.24. (R. 105). This would have resulted in a fee to Richman of \$9,377.62. (Richman's operations for the same months a year earlier resulted in receipt of \$97,404.58). (R. 600). In addition to Appellant Richman's ownership of one-half the capital assets of the Trust, his time and experience in administering the Trust as agent, he paid the expenses of managing the properties out of his 10% fee.

"I furnished the office, telephone, all equipment, all stenographic and bookkeeping help, tax work, and paid the phone bill, paid the postage."

He did not pay the phone bill for the managers at the five apartment house. They were paid by the trust. He testified:

“Mr. Harrison was paid by me entirely. He was never an employee of the Trust, or never was any other secretary of mine an employee of the Trust. I paid the social security, unemployment, compensation insurance on my secretary.”

“The Court: The books and records of the Trust were kept at your expense? You paid the entire cost for their keeping?”

“The Witness: I did.” (R. 604)

The Receiver's accounting shows a total expenditure for salary of bookkeepers and other salary expense of \$1,628.18 (R. 110, Ex. 2); Petty cash \$180.48; Rental of apartment occupied by Receiver \$65.00 a month would be an additional \$195.00; Receiver's fee \$6,000.00; his attorney \$1,800.00, resulting in a total cost of \$9,803.68, exclusive of miscellaneous expenses, some of which are shown in the Receiver's accounting as typewriter rental, pay roll taxes and other items. Thus \$9,803.68 at least will be paid out. The court stated it should be less than the \$9,377.62 Mr. Richman would have received.

Reference is here made to the facts heretofore stated, for example: the Receiver's \$355.00 a month salary while employed by the County of Orange; his previous monthly salary of \$350.00 a month while employed by Narmco Company, a fishing pole manufacturer; and his \$100.00 a week drawing account while an

employee of Morgan Construction Company for a few months in 1951, as bearing upon this question. The entire record demonstrates that the Receiver delegated his duties to Miss Cosgrove, who in turn relied upon the five managers of the apartment houses and Mr. Richman's former secretary, the bookkeeper Harrison, to operate the properties and keep the records.

Other evidence presented by the Receiver upon the fee question was the testimony of Jefferson A. Mann (R. 298-324), who testified he was connected with R. A. Rowan & Co., a real estate concern which had been operating for over fifty years in Los Angeles; that it managed properties for individuals (R. 298). He identified the Los Angeles Realty Board Schedule of Management Fees (R. 309), which was applicable to apartment houses (R. 310); that such manager bore his own expenses of collecting the rents and making an accounting; made recommendations to an owner concerning management, renegotiated contracts, loans, and made major decisions as to alterations. The schedule of fees provided:

“ . . . when the monthly rentals from the single tenants or the average monthly rentals from two or more tenants in the same building is over \$2,000.00, the charge shall be 3%.” (R. 313).

I. Objection To Receiver's Report.

Appellant Richman's Objections to the report of the Receiver, the Accounting attached thereto, and the Petition for fees, was directed to the allegations of the Report that the Receiver had performed the many

acts alleged in the Report, when in fact he had delegated to others the performing of those acts (R. 126); the Receiver's failure to perform the Air Pollution Control, Inc., Contract pertaining to the installation of smog control units (R. 127); failure to be available or otherwise supervise the maintenance of the refrigeration unit which failed at the Western Arms Apartments (R. 128); failure of the Receiver to carry out the Order of the Court dated February 26, 1954, in that he failed to collect rents which he stated in his account to be \$2,000.00; failure to retain control of the Petty Cash fund in the hands of his agents-managers in the amount of \$785.00; his act of paying \$2,027.25 on February 27, 1954 (R. 134-135); and his failure to pay Appellant's claim, in the amount of \$3,104.33 (R. 135). During trial it was ascertained that the Receiver in no manner accounted for or reported concerning his \$400.00 deposit upon Workmen's Compensation, on which \$158.00 was refundable to him (R. 667) rather he turned it over to appellant Tidwell. (R. 664)

J. Attorney's Fees.

Appellant Richman's Objections to the attorney fees claim for ordinary services in the sum of \$3,000.00, plus an unspecified amount for extraordinary services, were upon the ground that they were excessive, upon the further ground that the attorney unreasonably expended time, and improperly advised the Receiver. Among the latter class of acts were:

1) The attorney and Receiver taking over the Trust's bank account and requesting managers to turn

over money to them and, in fact, collecting moneys from one of the managers before the Receiver was appointed; 2) The attorney's failure to advise the Receiver that nonperformance of a Smog Control Contract might result in criminal prosecution; 3) The attorney apparently erroneously assumed that a litigant whose property has by Court Order been placed in the possession of a Receiver has no right to make inquiries concerning his property or the acts of the Receiver. After the Criminal Complaint had been filed against Richman, as an owner of one of the apartment houses and Agent for the Trust, thereafter the attorney for the Receiver had left a telephone message at Mr. Richman's office late on Friday afternoon advising that the Criminal Citation was set for hearing on Monday morning. Mr. Richman on Saturday went out to see the Receiver's bookkeeper Harrison to find out what had happened. The attorney for the Receiver objected to the statements made by the bookkeeper as being hearsay and asserted:

"but to go behind the Receiver's back, as Mr. Richman did in this instance, to go out and talk to his agent behind his back, to spy upon his operations without his knowledge, seems to me that those statements are clearly outside the scope of the agent's authority." (R. 643).

The services rendered by the attorney are stated to be evidenced by the Petition to Employ Counsel (R. 27), and the Order thereon (R. 29); the Petitions to pay Christmas Bonuses and to Renovate (R. 33, R. 36); the hearing upon the renovation Petition held on Jan-

uary 15, 1954 (R. 216-230), the Report and Petitions for fees.

Appellant presents the question as to whether or not this voluminous record and appeal would be pending had the Receiver and his attorney complied with the Court Rules as to filing an accounting and specifying the amounts of fee they desired, in their Petitions. Services rendered in this category are shown by the record. Affidavit of the attorney, and Order of the Court extending the Receiver's time to file his first report as required by the Rules. (R. 44). Had the Receiver or his attorney made a disclosure as to the Receiver's experience, qualifications and manner in which the Receiver was administering the property—that is by delegation while he was employed by the County of Orange, this record and the issues presented would not be still pending. The Receiver and his attorney took the position they were defending themselves, when it was their duty as fiduciaries to explain their whereabouts, acts and qualifications when attempting to justify them and the fees they sought. The original award of \$1,000.00 to the attorney was ample and even the \$1,800.00 later total award was less than the \$3,000.00 plus extraordinary the attorney sought. The court itself chastised the attorney when granting him the additional \$800.00. (R. 863, 865, 867).

SPECIFICATIONS OF ERROR

Appellant Richman filed notice of appeal from the whole of the Order and Judgment dated November 19, 1954, which resulted in the following errors:

1. It was error for the Trial Court to assume it had jurisdiction to construe and enforce Richman's and Tidwell's Settlement Agreement evidenced by the written offer dated February 19, 1954, and written acceptance on February 25th, 1954, except to the extent that it direct the Receiver to account, protect the rights of any other persons not parties to this litigation, and impound the remainder of the funds subject to the directions of Tidwell and Richman, the parties to the settlement agreement. (R. 137, 138, 154, 245, 685, 686).
2. It was error for the trial court to award a credit in favor of Appellant Tidwell against the balance of the funds in the possession of or under the control of the Receiver upon the following items:
 - A. One-half of asserted utility bills amounting to \$938.75;
 - B. One-half of certain taxes amounting to \$2,476.38;
 - C. One-half the cost of certain catalytic units (smog control) amounting to \$1,300.00. (R. 195)
3. The Court erred in failing to surcharge the Receiver on account of rents collected after the settlement and before 5:00 p. m. February 28, 1954, in the sum of \$1,290.59, in the amount of \$158.00 being Workmans Compensation Insurance deposit refund, in the amount of \$2,027.25 prepayment upon trust deed note, and in the

sum of \$785.00, being a petty cash fund under the control of the Receiver, subject, however, to the Receiver not being personally surcharged in the event the Appellant Tidwell is surcharged with these amounts. (R. 184, 185).

4. The Court erred in failing to award Appellant Richman a credit upon the funds remaining in the possession or under the control of the Receiver for his November, 1953, fee under the Trust Agreement, in the amount of \$3,104.35, but rather awarded him \$1,862.60. (R. 194).
5. The Court erred in ordering that the Receiver reimburse himself from the moneys in his possession to the extent of \$89.20 paid out by him for copies of depositions. (R. 195).
6. The Court erred in awarding to the Receiver Roy Hallberg a fee in the amount of \$6,000.00. (R. 194).
7. The Court erred in awarding to John White, Attorney for the Receiver, a fee in the amount of \$1,800.00. (R. 194).
8. The Court erred in determining that the First and Final Account and Report of the Receiver was full and correct. (R. 193, 194).
9. The Court erred in failing to disqualify the Trial Judge to hear the settlement of the Receiver's Account. (R. 157, 158, 456, 461).

ARGUMENT

Specification of Error 1.

Appellant Richman acknowledges that a court of equity has power and control over its Receiver but this power and control is for the benefit and subject to the direction of the parties to the litigation except where some public interest, as distinguished from private rights, might be involved. The Receiver and the Court exist for the benefit of the citizens—the parties litigant. The parties to litigation, after appointment of a receiver, have the right and the duty to minimize litigation and settle their differences. Having made a settlement the Court should—and we assert must—make all reasonable and proper Orders requested by the parties to carry out the settlement. Here the parties agreed as a part of their Settlement Contract that they make a Stipulation that the Receiver be relieved of his active duties at 5:00 p. m. February 28, 1954, and thence he account as of that hour. The parties submitted their Stipulation and the Court made an Order carrying it into effect, both dated February 26, 1954. The Settlement Agreement itself evidences the distrust existing between the parties and their counsel and reveals an effort to spell out principles for and a plan of carrying out the settlement. The offer, which Tidwell and her attorneys in writing accepted “unqualifiedly” (R. 143), recited the circumstances as follows:

“As I review the matter, the court decision gave your client what she was offered two and a

half years ago before suit was filed, namely, a division of the trust. The court in the decision avoided any intimation of fraud on the part of Mr. Richman and your auditing has not produced any fraud. Therefore, until such time as the last court has sustained your contention of any fraudulent acts on the part of Mr. Richman, you may not expect any concession from Mr. Richman that in any way implicates him with fraud.

“Your intimations that any arrangement Mr. Richman might make that he would not live up to are not appreciated. Bear in mind the record in this case is full of examples of Mrs. Tidwell changing her mind after agreements have been made, and I can assure you that anything Mr. Richman agrees to will be carried out.

“In regard to your request that I spell out ‘exactly’ the precise terms and wording of the release, I do not think that is at all necessary. Any agreement made contemplates a full release of any and all claims that either Mr. Richman or Mrs. Tidwell have or think they have against the other from the beginning of the world to the present time. If this matter is going to be terminated, it is my desire to have it terminated completely and not by use of trick terminology which might subject it to other lawsuits in the future.” (R. 139, 140).

The Court itself was aware of the family difficulties existing between Tidwell and Richman. Apparently it took upon itself the arranging for the Receiver’s bond on December 2, 1953. (R. 555). Even after the parties had settled, the Receiver and his at-

torney on a Sunday evening after a golf game on March 7, 1954, called the Trial Judge and advised him that a dispute existed between Tidwell and Richman concerning payment of certain expenses. The attorney for the Receiver testified he advised the Trial Judge that the attorneys for the parties were not in agreement. The Trial Judge directed the Receiver and the attorney at that time by phone to pay the various items without consulting with or considering the desires of the parties to the settlement.

The Court was sufficiently informed by the terms of the February 26th, 1954 Stipulation (R. 54) of the parties to make its Order on February 26th terminating the Receiver's general powers by its Order directing the Receiver to terminate his active duties and to turn over the assets to Tidwell:

“excepting money in bank and under the control of the Receiver”.

That the Court realized the limited powers of the Receiver is apparent from its Order directing the filing of the dismissal of the action with prejudice, when it ordered the filing of dismissal on March 22, 1954, in the following terms:

“It is so ordered except that jurisdiction is retained over all monies, credits and assets in possession or under control of Roy E. Hallberg, Receiver heretofore appointed herein, and over said receiver and to fix his compensation and allow his expenses, including fee for his attorney.” (R. 125)

These events having occurred, Appellant Richman in his Objections to the Report and Account of the Receiver, alleged that the Trial Court had no power to interpret or construe the litigants' Settlement Agreement of February 25, 1954, and alleged that each is entitled to apply to a court of competent jurisdiction to initially and originally determine their respective rights under their settlement contract. (R. 138).

The receivership was ancillary and incidental to the action which had been dismissed with prejudice. The Court by its Order of February 26th divested the Receiver of control over the subject matter of the receivership "excepting money in bank and under the control of the receiver". These were the only assets under the control of the receiver subject to his accounting for his administration, when the Court on March 22nd ordered the dismissal with prejudice and spelled out its jurisdiction over the Receiver to fix his and his attorney's compensation.

Aside from the events which seemed unusual to Appellant Richman, such as the Trial Judge forthwith ordering the appointment of the Receiver on November 30th, and the representations made concerning the Receiver's availability, experience and qualifications and his delegating his duties to Miss Cosgrove. Appellant Richman had the right, in the event he could not agree with Tidwell as to the construction of their settlement agreement, to cause such a dispute to be the subject matter of another action. Such an action would have permitted of the due process procedure requiring pleadings to be initially presented and deter-

mined by a court of competent jurisdiction. That his objection to the Trial Judge proceeding to construe their contract was justified, is evidenced by the extended spasmodic hearings during the months of May and June resulting in the Court approving the Receiver's Report and Accounting as being correct in every instance. Obviously, such a blanket approval was error because:

- A. The Court, in another part of his Order directed that a payment made by the Receiver in the amount of \$2,027.27, being an installment due on March 1, 1954, was an improper payment on the part of the Receiver. (R. 193).
- B. The accounting of the Receiver did not account for rents during the period February 25th-28th, which his Report recited to be the sum of \$2,000.00, but which was shown by the evidence to be \$1,290.59, and which item was acknowledged in the Court's Memorandum Decision (R. 184).
- C. The accounting acknowledged petty cash funds, but the Receiver failed to retain control of them and, in fact, permitted Tidwell's agents to take possession of them, as acknowledged in the Decision. (R. 185).
- D. The Court in its Order recited:
 - "The Receiver failed to pay certain utility bills incurred in the month of February, 1954, in the sum of \$1,877.50" (No evidence to support Finding).
 - "The Receiver also failed to pay any of the real property taxes on Trust assets for the months of January and February, 1954, which

taxes amount to the sum of \$4,952.77. The Receiver further failed to pay for two catalytic units in the sum of \$1300.00 each. . . . ” (R. 193).

Each of these purported Findings and the portions of the Judgment which thereafter ordered certain benefits for Tidwell constituted and was a construction of the Settlement Agreement which was beyond the power and right of this Trial Court. These points are in addition to and aside from the fact that the Court ignored the written escrow instructions signed by the settling parties and their attorneys providing there be no prorations, specifically none for rent or taxes.

Specifications of Error 2, 3 and 4.

The Trial Court's Memorandum Decision (R. 182) and its Order of October 22, 1954 (R. 189) each in part interpreted and by order applied the Settlement Agreement of the Appellants. Court ordered pretrial for June 21, 1954, Appellant Richman's Exhibits A to H were received, a continued hearing was had on September 27, 1954, the court sustained an objection to Appellant Tidwell's evidence (R. 835-837), no other trial was ever held. The gross abuse of judicial discretion charged by Richman arises out of the fact that when Appellant Tidwell offered on September 27 evidence as to her reimbursement claims for real property taxes and utility bills the court sustained an objection (R. 837) to this evidence leaving no evidence of record to support the Court's Order and Judgment directing the payment of Tidwell's claims.

The Settlement Agreement verbatim appears R. 139-144. It consists of a February 19, 1954 letter offering to buy or sell under the terms stated in the letter. One of which was that the parties would stipulate for the Receiver to be relieved as of February 28, 1954 and that the Receiver would report; and/or after payment or provision for the Receiver's claims and expenses and operating obligations, any funds remaining would be divided equally.

Appellant Tidwell contended in the trial court that the written agreement and the escrow instructions specifically contemplated by the agreement must be construed together under California Civil Code 1642 citing *King v. Stanley*, 32 Cal. (2), 584, 197 P. 2d 321; *Pigg v. Kelley*, 92 Cal. App. 329, 268 P. 463; *Womble v. Wilbur*, 3 Cal. App. 527, 86 P. 921. For Richman the trial court was advised (R. 821) that he agreed with this proposition and cited a more recent decision. *Lester v. Handelsman*, May, 1954, 125 Cal. App. (2) 243, 270 P. 2d 563, where the court stated at 567:

"There are two instruments involved here, the agreement of purchase, and the escrow instructions. Where the terms of an executory agreement for the sale of real property are clarified by the provisions of signed escrow instructions, those instruments are to be considered together in determining the understanding of the parties and in ascertaining their rights and obligations."

If there is uncertainty as to the meaning of the Settlement Agreement it was clarified by the escrow instructions executed on February 26 one day after Tidwell

accepted the offer by her letter of February 25 when both she and her attorneys signed the instructions, (R. 800) which specifically provided that there would be no proration of taxes. The escrow instructions contained the provision:

“The following adjustments only are required in this escrow.”

No adjustment or prorations were provided for. Specifically blank spaces were provided for the insertion of the date for prorating taxes and rents and the word “none” was inserted.

The abuse of discretion by the trial court becomes more glaring as a result of it ordering proration of taxes and utilities when Appellant Richman informed the Court at pretrial (R. 837) that in the event Tidwell's proffered evidence as to taxes and utilities expenditures were to be received in evidence it would necessitate a trial for the following reasons: Appellant Richman had paid personal property taxes which otherwise should be prorated and an accounting of the monies received by Tidwell after March 1st on account of utilities would be necessary. The trial court stated that in the event it changed its ruling it would appoint a Master to take Evidence. (R. 837).

The Order of the trial court was further erroneous in awarding the buyer Tidwell one-half the cost of the catalytic units, amounting to \$1,300.00. These were contracted for before the Receiver was appointed. They were apparently installed after the hearing on the

criminal citation on February 1, 1954. The contract specifically provided (R. 802) that the balance of the purchase price was "payable" upon receipt of the Los Angeles County Pollution Control District Permit to Operate." The permits were issued (R. 805) on March 9 and June 2, 1954. The purchaser Tidwell was, under the Settlement Agreement, (para. 4):

"entitled to all receipts and shall assume all operating obligations of Richman Trust from March 1, 1954 on or until the appointment of a Receiver as might occur under 7(c) hereof."

Appellant Tidwell purchased the assets subject to the Receiver operating the assets and collecting the rents until February 28, 1954. The smog control catalytic units were being purchased after March 1, 1954 on the date when the Los Angeles County Pollution Control District issued a permit (March 9 and June 2) even though they may have been physically installed before March 1, 1955.

The parties specifically provided an exact hour in their stipulation, Exhibit C, (R. 798) when the Receiver should terminate collecting the rents. It was to be 5:00 o'clock, Sunday, March 28, 1954. The Court made the Order, Exhibit D, (R. 798) carrying out the stipulation, both of which provided that the Receiver was to carry on his active duties of management and control and possession of the assets until 5:00 p.m. February 28, 1954. Thereafter, the Receiver was required to continue to retain the "money in the bank and under the control of the said Receiver." The Decision states that these rents collected before

5:00 p.m. on February 28 and the cash funds in the amount of \$785.00 in the possession of the Receiver's agents, the managers of the apartments, were "assets of Richman Trust." The Court then deducts that since Tidwell purchased the assets she was entitled to these sums of money. Obviously, such a deduction ignores the terms of the Purchase Agreement, the Stipulation of the parties and the Court's own order that she was to purchase as of 5:00 p.m. February 28, 1954 and the receiver was to retain all the monies and receipts before that hour. After an accounting the purchaser was entitled to one-half the remainder. The Order of the Court fails to carry out its decision concerning a payment made by the Receiver on February 27, 1954 in the amount of \$2,027.28 for the benefit of Tidwell. The Decision explains (R. 186) that the Receiver could not have anticipated on February 27 that this Trust Deed installment payment would not have been paid by him on March 1st, three days later. But the record without conflict shows the Receiver and his attorney discussed the settlement on the evening it was made on February 25 and the attorney explained the February 26th stipulation and order to the Receiver. (R. 418-419). The Court concludes that Richman is entitled to a claim upon the funds for this amount and gives him credit for half the amount, to wit, \$1,013.64 in its Order. (R. 195). This would appear equitable and proper if it were not for the fact that the whole \$2,027.28 should be returned to the funds, thence the fund divided and the parties' respective one-half surcharged or credited with the proper payments. The effect of the

present Order is to substantially award Tidwell practically three-fourths of this \$2,027.28 payment.

The Receiver's accounting showed a deposit on account of Workmen's Compensation Insurance in the amount of \$400.00. It completely failed to account for the unused portion of this item. There is no conflict in the evidence that refund of \$158.00 was due and that the Receiver turned the policy and refund over to the Appellant Tidwell.

Appellant Richman's agency contract to manage the Trust, of which he was a one-half beneficiary, required a fee of 10% of receipts, exclusive of capital assets. He had received this fee during the many years he managed the properties which increased in value from \$375,000 to \$1,200,000. The Receiver acknowledged the claim in his accounting in the amount of \$3104.33 and this amount should have been ordered paid.

Specifications of Error 5, 6 and 7.

The Court erred in awarding a fee of \$6,000.00 to the Receiver, \$1,800.00 to his attorney, and deposition costs in the amount of \$89.20.

A late expression of the court's attitude in awarding compensation to receive is found in *In re Pittsburgh, S. & N. R. Co.*, 75 Fed. Supp. 292, where the court adopted a previously established rule:

"There are no hard and rigid rules for determining the compensation of equity receivers. The matter rests largely in the sound discretion of the Court. See Vol. II, Section 620, Tardy's Smith

on Receivers (second edition). The same author in Section 621, cites the following from 34 Cyc. 472, which was quoted with approval by the Circuit Court of Appeals in the case of *Eames v. H. B. Clafin Co.*, 2 Circ. 231 F. 693, 695, as illustrating the controlling factors to be considered by a court of equity in fixing the compensation of equity receivers: 'The considerations that should be controlling with the court in fixing compensation are the nature of the matters administered, the amount involved, the complications attending it, the amount of bond required, the time spent, the labor and skill needed or expended, the degree of success attained under all the circumstances, the fidelity to details, the appreciation evidenced as to the responsibilities of the position, the character of such responsibilities, the expedition with which the trust has been administered, in view of results reached, and the method, character, and promptness of the accounting, having regard, as a standard, to what is paid for somewhat similar services in the performance of official duties, not the standard in private business transactions. . . . The value of the services rendered should not be considered generally but only with reference to the trust administered.' '' (page 297).

Naturally, there are no reported decisions involving a Receiver's fee under the circumstances existing in this case, but a case involving fees of a hotel receiver was found in the early case of *Cake v. Mohun*, 17 S. Ct. 100, 164 U. S. 341, 41 L. Ed. 447. At 450 then the Court stated:

“In view of the fact that the receiver had never been in the hotel business; that he employed a manager at \$125.00, and a part of the time at \$150.00 a month, and required of him a bond for the faithful performance of his duties; that he was not prevented from giving his usual attention to his business, and ordinarily spent only his evenings at the hotel,—we are bound to say that, if it had been an original question, we should have fixed his compensation at a considerably less amount.”

A Receiver's prior earnings are relevant in determining his fees.

Walton N. Moore Dry Goods Co. v. Lieurance,
38 Fed. 2d 186, at 192.

His prior experience and knowledge is in detail pointed out in *In Re Insull Utility Investments*, 6 F. Supp. 653, 661; that is, there the Court pointed out as an example.

“If the appointee be an engineer or an operator, whose years of experience especially qualify him and he has technical training supplementing such experience, and he gives all of his time to the task, he should be paid more than one who, though entitled to the confidence of the court, is not equally qualified to render the service for which the technical experience of the engineer qualifies him. Nor should one award the same compensation to an outsider who does not devote all of his time to the management and operation of the company.”

Concerning time expended by the Receiver the Court further stated at page 661:

“Another important factor in the compensation of the receiver is the time devoted to the work and the character of the work performed. Does such appointment exclude the appointee from carrying on other work? Is the appointee thus named, a receiver in other suits? Are the appointees engaged in business, and does the appointment terminate such participation?”

That compensation should be moderate is the rule.

“ . . . as said in *Penner v. Drilling Development Co.* (D.C.) 293 F. 766, 767, ‘it must be remembered, though too often forgotten, that receiverships are not to enrich the encumbents and counsel.’ ”

Bailie v. Rossell, 60 Fed. 2d 806, 807.

In re New York Investors, Inc., 79 Fed. 2d 182, where an Appellate Court pointed out when reducing the Trial Court’s allowance by fifty per cent:

“The Supreme Court has given notice on more than one occasion that receivers and attorneys engaged in the administration of estates in the courts of the United States and in litigations affecting property within the jurisdiction of those courts should be awarded only moderate compensation, and that many of the allowances heretofore awarded have been too high.” (Page 185).

Finally, the maxim, he who comes into equity must come with clean hands, has application to any conveyable situation. Here the Receiver’s hands are at least unclean concerning the representations to the Trial Judge; his concealing his being employed at the Coun-

ty of Orange and his delegating his receivership in fact, to Miss Cosgrove. As explained in *Johnson v. Yellow Cab Transit Co.*, 321 U. S. 383, 387, 88 L. Ed. 841, 818, the doctrine is not to punish a litigant but is for the advancement of right and justice. It is not right or just to compensate this Receiver at the rate of \$2,000.00 a month or \$6,000.00 for services rendered by his wife and for his weekend trips from Orange County to Los Angeles, when he concealed he was for all but one week of the three months a full time employee rendering forty hours services of each week to the County of Orange at a salary of \$355.00 a month.

The Trial Court's Order and Judgment of October 22, 1954, authorized the Receiver to pay the cost of his copies of his and his attorney's depositions. Indirectly, because not specifically identified, there is involved the failure of the Receiver to retain control of the item of \$785.00, being petty cash in the possession of his five managers, and the further item of \$1,290.59, being rents collected by the managers before 5:00 p.m. February 28, 1954, which the Receiver failed to obtain from the managers and which admittedly was obtained by the purchaser, Appellant Tidwell. Also the balance of the Compensation Insurance Deposit.

The Trial Judge apparently appreciated that the Receiver was subject to being surcharged when it stated concerning a contemplated audit on April 12, 1954, at the time it set the accounting of the Receiver for trial on May 12th, and determined to hold a pre-trial upon the issue of distribution of the remainder of the moneys, when he said:

“If it turns out the receiver is either a miserable bookkeeper and these records are in bad shape, or he is a man of no fidelity and has served in that capacity here, or with that taint, then the expense of the audit will be assessed against the receiver.”

Appellant Richman seeks an application of the rule referred to by the Trial Judge which is in substance that the receiver is a trustee. The Supreme Court in *Crites, Inc., v. Prudential Ins. Co.* (1944), 322 U. S. 408, 88 L. Ed. 1356, when reversing a Trial Court in allowing a Receiver certain fees which he and the attorneys agreed to pool and split upon the ground that the allowance was a clear abuse of discretion, pointed out (414-1360):

“It is obvious, moreover, that Simkins (the receiver) was bound to perform his delegated duties with the high degree of care demanded of a trustee or other similar fiduciary.”

At 418-1362:

“But whether the parties to such a contract should be allowed any fees at all, and if so the amount thereof, are normally matters within the sound discretion of the District Court and are not reviewable except where a clear abuse of discretion is apparent. In this case, however, the fact that Simkins entered into a fee-splitting contract so patently illegal, plus the fact that he engaged in other misconduct and indiscretions incompatible with his position as an officer of the court, compel the conclusion that all fees and compensation as co-receiver should have been denied him. Cf.

Woods v. City Nat. Bank & T. Co., supra (312 U. S. 268, 85 L. ed. 825, 61 S. Ct. 493, Am. Bankr. Rep. (NS) 655.”

In the instant case the Receiver boldly refused to advise Appellant of the sum of money he would accept for his part-time services as Receiver while employed as a full-time employee of the County of Orange. The Receiver's attorney demanded \$3,000.00 for ordinary services; he demanded that an additional amount be fixed by the Court for extraordinary services. Naturally, Appellant Richman availed himself of deposition proceedings between April 12 and May 12, 1954 to confirm the results of what was obviously an expensive investigation to find out what qualifications, experience and abilities the Receiver Hallberg actually possessed. The Receiver and his attorney requested the Clerk of this Ninth Court to print substantial portions of their deposition. Their depositions demonstrate the quality of the services rendered by the attorney and the, at least equivocations, of the Receiver and his wife, Miss Cosgrove, when the Receiver was being questioned concerning these subjects.

For example only, (R. 331), is an instance where the Receiver, upon being prompted by his Miss Cosgrove, attempted to avoid disclosing his full-time employment by the County of Orange.

Under these circumstances the Receiver should at least bear his own expense of his own copies of depositions and should be surcharged with the petty cash item of \$785.00, the rents in the amount of \$1,290.59, and compensation insurance, conditioned upon waiver

of the surcharge in the event Appellant Tidwell accounts to Appellant Richman upon these items. Proper deduction in the amount of the \$6,000.00 fee awarded by the Trial Court will avoid surcharging the Receiver with the expenses incurred by the Appellant in the Trial Court and upon this appeal. In like manner the award of \$1800.00 to the Receiver's attorney is excessive, considering the nature and extent of his services as shown throughout the record.

Specification of Error 8—Accounting.

Appellant Richman seeks an Order reversing the Trial Court's approval of the Receiver's Report and Accounting as being full and correct. He asserts that it was and should have been easy to have conditionally surcharged the Receiver's Account and directed the payment of the surcharge out of Tidwell's one-half of the remainder in the following manner:

1. Amount Reported by the Receiver as being under his control and possessions:		\$20,697.71
Add the following items, being amounts received by Tidwell:		
Petty Cash	\$	785.000
Rents Feb. 25-28—		
5:00 p.m.		1,290.59
Note Payment		2,027.25
Comp. Ins. Refund		158.00
		<hr/>

Total Additions or Sur- charge:	4,260.84
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Total Funds Chargeable to the Receiver:	\$24,958.55
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2. Direct the Receiver to pay to Appellant Richman the 10% Trust Agreement Fee for his services during November, 1953 in the amount of:
- | | |
|--|----------|
| | 3,104.33 |
|--|----------|
-

Balance Remaining:	\$21,854.22
--------------------	-------------

$\frac{1}{2}$ the Balance of the Fund	\$10,927.11
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3. Richman and Tidwell each being entitled to $\frac{1}{2}$ the fund, subject to Tidwell surcharge and Richman the above credit, as follows:

A. *Tidwell*:

$\frac{1}{2}$ the Fund:	\$10,927.11
Petty Cash	\$ 785.00
Rents	1,290.59
Note Inst.	2,027.25
Comp. Ins. Refund	158.00
	4,260.84

Receiver pay to Tidwell:	\$ 6,666.27
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B. *Richman*:

$\frac{1}{2}$ the Fund:	\$10,927.11
Fee	3,104.22

Receiver pay to Richman:	\$14,031.44
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Balancing of the Accounting:

Receiver's Report:		\$20,697.71
To Tidwell:	\$ 6,666.27	
To Richman:	14,031.44	\$20,697.71

4. Such fees as this Court deems appropriate and proper to be paid to the Receiver and to his attorney for their services in this transaction should be paid one-half by Richman and one-half by Tidwell, out of the \$14,031.44 payable to Richman and the \$6,666.27 payable to Tidwell.

As between Appellants Richman and Tidwell a further problem is presented. Appellant Tidwell, at the time of filing this Brief, has asked for and obtained a Stipulation from Appellant Richman that she need not file an Opening Brief. Appellant Tidwell may abandon her point (R. 973) that she is appealing from the Order of the Trial Court in failing to award her \$577.50 for revenue stamps and escrow expenses, being the only point not heretofore covered in this Brief, and if she does she will not be an Appellant of record and will not have been, in fact, one of two persons jointly interested in the protection of a fund. It would appear frivolous for Appellant Tidwell to assert a right to be repaid the seller Richman's escrow and revenue stamp expenses when she and her attorneys signed the seller's escrow instructions which provide (799 A):

“Notwithstanding the printed provisions in these instructions I agree to pay, in addition to the buyer's costs and expenses in this escrow, all of the seller's costs and expenses of this escrow and

the costs of the policy of title insurance, revenue stamps and recording and filing of instruments and documents and the seller's escrow fee."

In reversing the Trial Court's Order of October 22, 1954, the well established, fundamental rule that where one of two persons who are the owners of a common fund expend moneys to pay the court costs and expenses of attorneys to protect the fund, should be reimbursed for these costs and expenses. Such a direction by this Honorable Court would do justice between the Appellants Tidwell and Richman.

Specification of Error 9—Trial Judge Disqualification.

Appellant Richman urges consideration of the entire record in determining whether or not there was a gross abuse of judicial discretion arising out of the Trial Judge refusing, upon Petition, to disqualify himself under the circumstances existing. The Statute provides:

"Sec. 455. Interest of justice or judge. Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein."

28 U.S.C.A. 455.

There are few, if any, reported decisions applicable to the circumstances of this case. The procedure for a litigant to raise the question requiring the Trial Judge

to "in his opinion" decide whether he should disqualify himself is by a Petition to disqualify.

Cyc. Fed. Proc., 2nd Ed., Vol. 1, p. 32, Paras. 22 and 23.

It was only after thorough investigation, consultation and deliberation that the appellant Richman, a member of the Bar, approved the filing of the Petition to disqualify on April 30, 1954. (R. 158-164). The Court had on April 12, 1954 (R. 157) made a statement

"that no evidence will be taken concerning the appointment of the Receiver in this action."

Investigation had been in process for several weeks concerning the Receiver Hallberg's whereabouts and background, culminating in his admissions in the deposition proceedings on April 22nd. (R. 329-333, R. 871-921). With all due respect to the judiciary and its members, it was then believed and set forth in the Petition to disqualify that Judge Tolin was a material and relevant witness to the unclean hands and misconduct of the Receiver, especially the Receiver's representations as to his ability, experience and qualifications.

Appellant Richman and his counsel believe they have a duty to stand up for their cause against the charges of their nominal adversaries Appellant Tidwell, the Receiver and his Attorney, and even the Judge of the Court. The record will reveal upon close scrutiny no discourtesy to any Member of the Bar, any party to the proceeding or the Trial Judge. Under the circumstances the Trial Judge should have disqualified

himself and certainly was not justified in castigating litigant Richman or his Attorney with the assertion that the Receiver had been treated worse than a criminal. In *Walton N. Moore Dry Goods Co. v. Lieurance*, C. C. A. 9th, 1930, 38 F. 2d 186, it was held that the salary of a receiver prior to his appointment is of substantial persuasive value in determining his fees. This Receiver's salary of \$350.00 a month while employed by Narmco in 1953, drawing account of \$100.00 a week in 1951 with Morgan Construction and \$355.00 at County of Orange for a 40-hour work week when he was acting as Receiver was proper evidence. They were entitled to know whether the Receiver was available, as he represented, to take over five apartment houses containing in excess of 400 units which the parties and owners agreed for settlement purposes had a value of \$1,200,000. They were entitled to question the Receiver concerning his representations as to acting for or as a Receiver in Chicago or managing apartment properties for elderly, wealthy relatives.

Dated August, 1955.

Respectfully submitted,

BRADY, NOSSAMAN and WALKER
JOSEPH T. ENRIGHT,

Attorneys for Appellant.

By JOSEPH T. ENRIGHT

No. 14702

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

FREDERICK I. RICHMAN,

Appellant,

vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver,

Appellees.

LYDA TIDWELL,

Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver,

Appellees.

Brief of Appellees Roy E. Hallberg, as Receiver of
All the Real and Personal Property Constituting
the Former Richman Trust, and John Whyte,
His Attorney.

JOHN WHYTE,

*Attorney for Appellee Roy E. Hallberg,
as Receiver,*

JOHN WHYTE,

In Propria Persona.

FITZPATRICK & WHYTE,

756 South Broadway,
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Of Counsel.

FILED

SEP 16 1955

PAUL P. O'BRIEN, CLERK

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.



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I.

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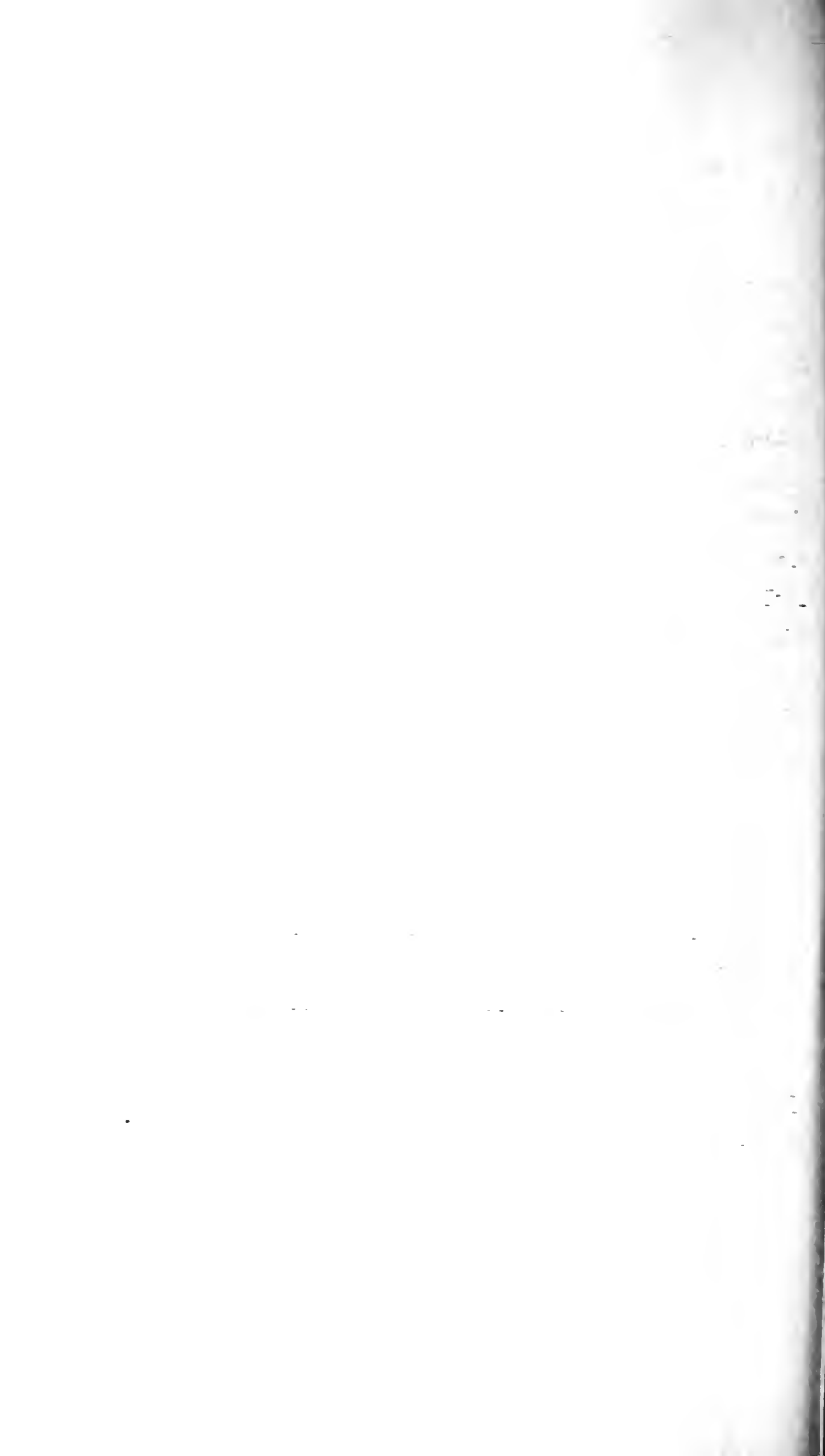
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No. 14702

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

FREDERICK I. RICHMAN,

Appellant,

vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver,

Appellees.

LYDA TIDWELL,

Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver,

Appellees.

Brief of Appellees Roy E. Hallberg, as Receiver of
All the Real and Personal Property Constituting
the Former Richman Trust, and John Whyte,
His Attorney.

FOREWORD.

In the interest of brevity appellant Frederick I. Richman will hereinafter sometimes be referred to as "Richman," appellant Lyda Tidwell will sometimes be referred to as "Tidwell," appellee Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust will sometimes be referred to as "the Receiver" or "Hallberg," and appellee John Whyte, the Receiver's attorney will sometimes be referred to as "Whyte."

JURISDICTIONAL STATEMENT.

This appeal is taken from a final order of the District Court settling the Receiver's account, allowing fees to the Receiver and his attorney, and providing for distribution of funds in the hands of the Receiver. [R. 190-196.] Appellants invoke the jurisdiction of this Court under 28 U. S. C., Section 1291.

STATEMENT OF THE CASE.

That portion of appellant Richman's statement of the case which sets forth alleged facts relating to his specifications of error with respect to the Receiver and his attorney¹ (as distinguished from alleged facts relating to his under the heading, "Statement *Re* Fees—Conduct Resulting in Gross Abuse of Judicial Discretion," which includes the material at pages 16-46 of Richman's opening brief. Such portion of Richman's statement of the case is misleading, biased, incomplete, inaccurate and untrue for the following reasons:

(a) It omits numerous facts material to a determination of the issues herein touching the Receiver and his counsel.

(b) It contains many statements which are unsupported by any reference to the record. By way of illustration, and without attempting to specify every instance, beginning at the top of page 34 of Richman's opening

¹Specifications of error, Nos. 3, 5, 6, 7, 8, and 9. (App. Richman's Op. Br. pp. 47-48.)

specifications of error with respect to Tidwell²) appears

²Specifications of error, Nos. 1, 2, 3, 4, 8, and 9. (App. Richman's Op. Br. pp. 47-48.) It will be noted that Specifications Nos. 3, 8, and 9 assertedly concern both the Receiver and Tidwell. (*Idem*, also pp. 66-71.)

brief three separate declarations of asserted fact are made in as many sentences. Not one of them is supported by a reference to the record. Similarly, in the paragraph immediately following the quoted material on page 42 of said brief several items and amounts are mentioned as being a part of the Receiver's accounting. None of these items is accompanied by a citation to the record, except for the first item which is followed by a reference to the record [R. 110, Ex. 2] that does not support the item.

(c) It is replete with instances where the allusion to the record does not uphold the assertion made. Selected at random are the following examples. At the end of the first paragraph on page 44 there is a reference to "R. 664" as upholding a certain statement. It does nothing of the sort. Again, on page 24 it is asserted that the Receiver "intended to delegate his receivership duties to . . . Miss Cosgrove, the maiden name of his wife," followed by a reference to "R. 380." The record fails to sustain the assertion. The same is true of the statement on page 22 that "Richman could not contact the Receiver after December 18, 1953. [R. 537-538.]"

Accordingly, the Receiver and his attorney deem it necessary to set forth their own statement of the case. In order to aid this Court in comparing the facts recited in their statement with the facts as they are recited in Richman's opening brief, we shall first make a preliminary and general statement of the case, followed by a series of topical statements whose heading and subject matter will correspond closely with the headings and subject matter of subdivisions A to J, inclusive, found on pages 16-46 of Richman's brief.

STATEMENT OF THE CASE (Continued).

I.

Preliminary and General Statement.

On November 30, 1953, the District Court handed down a memorandum decision terminating the Richman Trust, of which appellants Richman and Tidwell (brother and sister) were each a trustor, trustee, and beneficiary, on the ground that Richman had been guilty of undue influence in procuring his sister's consent to the Trust. [R. 3-20.] On the same day the court³ made an order appointing Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, the bulk of that property consisting of five apartment houses located in the City of Los Angeles, California, and named as follows: Canterbury, Fountain Manor, La Loma, Oliver Cromwell and Western Arms. [R. 21-22, 25.] The approximate value of the trust assets was \$1,200,000. [R. 724.]

The order appointing the Receiver fixed his bond at \$75,000 [R. 23-24], and on December 2, 1953, the Receiver filed his bond after the same had been approved by the court. [R. 25-26.] Likewise, on December 2, 1953, the District Court made an order authorizing and directing the Receiver to employ Messrs. FitzPatrick & Whyte and John Whyte, as his attorneys.⁴ [R. 29-30.]

³Whenever the word "court" is used herein without further descriptive language, the reference is to the District Court or Trial Court.

⁴Nearly all of the legal services performed by Messrs. FitzPatrick & Whyte in connection with receivership and later in defending the Receiver against the attack made on his report and petition for fees by Richman were performed by John Whyte, as distinguished from his partner, Richard FitzPatrick. Hence, the Receiver will be spoken of as having but one attorney, John Whyte. [R. 542.]

On February 26, 1954, after Tidwell and Richman, the parties to the main litigation, had agreed upon a settlement of their differences, the trial court made an order directing that the Receiver "be relieved of his active duties of management, control and possession of the assets known as the Richman Trust, as of five o'clock p. m., Sunday, February 28, 1954, and that the said Receiver . . . give over control and possession to Lyda Tidwell, plaintiff, of all the assets of the said Richman Trust, excepting money in bank and under the control of the said Receiver" [R. 55-57.] Thereafter, on March 18, 1954, the Receiver filed his first and final report and petition for allowance of "reasonable" fees for his services as Receiver from about December 1, 1953, to and including February 28, 1954. [R. 75-121.] Such petition did not show in what amount fees were being asked, as required by Rule 18(c), Local Rules Southern District, California, for the reason that the Trial Judge had given Whyte permission "to leave it to the court to determine a reasonable amount that the court would not insist upon compliance with the rule that an amount shall be prayed for." [R. 254, 624-625, 938.] On the same day the Receiver's counsel filed his original petition for allowance of fees for legal services performed by him on the Receiver's behalf from about December 1, 1953, to and including March 17, 1954. [R. 58-74.] The attorney's petition prayed for the sum of \$3,000.00 as compensation for ordinary legal services plus such further sum as the court might think reasonable for extraordinary legal services.⁵ [R. 74.]

⁵The request for compensation for extraordinary legal services was prompted by a conversation between Whyte and the Trial Judge in which the court declared that certain work performed by the attorney "was in the nature of an extraordinary service." [R. 939.]

On April 6, 1954, Richman filed lengthy objections and an answer to the report and petitions of the Receiver and his attorney for fees. [R. 125-144.] At a hearing held on April 12, 1954, the court separated the issue of how the money in the hands of the Receiver should be divided between Tidwell and Richman from the issue respecting settlement of the Receiver's report and the allowance of fees to him and his attorney, and fixed May 11, 1954, as the date for commencement of the hearing on the latter issue. [R. 235, 237, 243.] At the same hearing Richman's counsel announced his intention to take the depositions of the Receiver and his attorney [R. 238], and such depositions were taken in April 1954. [R. 871, 922.]

The hearing on the settlement of the Receiver's report and the allowance of fees to him and his counsel actually began on May 12, 1954 [R. 246], at which time the Receiver's attorney filed a supplemental petition for allowance of fees for legal services rendered from March 18, 1954, to and including May 10, 1954. [R. 164-170.] During the course of the proceedings the depositions of Hallberg and Whyte were introduced in evidence. [R. 250, 544.] The hearing continued for approximately four and one-half days, exclusive of final argument. [R. 246, 265, 340-341, 416-417, 439, 540, 613, 635, 700-701, 755.] All of the time spent in the hearing was devoted to defending the Receiver against Richman's attack on his report and petition for fees and to laying a foundation for determining the amount of a reasonable fee to the Receiver, except that a part of one afternoon session [R. 540-571] and ^{a part of} one morning session [R. 614-629] were devoted to the attorney's petition for fees.

During the course of the hearing Richman's attorney conceded that his client was not attempting to surcharge the Receiver personally but rather, Mrs. Tidwell, the successful litigant in the main action, and this was so understood by the Trial Court. The statements made in this regard were as follows:

"The Court: Well, I think the objections as filed did undertake to apply the surcharge against the Receiver, but the statement counsel made in court as to what his objective is, or one of his objectives in the matter here is to have it [392] applied against Mrs. Tidwell, who is not the receiver. Is that right?

Mr. Enright: Yes, your Honor.

The Court: So the Receiver came here upon pleadings which undertook to have him surcharged, but the theory of trial, which was announced rather early in the trial, is that the attempt to surcharge is not against the Receiver, Mr. Whyte's client, but against the prevailing litigant in Tidwell vs. Richman. Does that state it?

Mr. Whyte: Is that your position, Mr. Enright, that you are not now trying to surcharge the Receiver?

Mr. Enright: We surcharged that Receiver. We asked that it be a charge upon the funds in his hands. That is the way we pleaded it. That is the way we stated it in the inception. I am sure the Receiver understood it that way.

The Court: Well, I don't know whether he clearly understood it that way at the beginning, Mr. Enright, because I didn't. And while I have great respect for the Receiver's ability to read and understand, I doubt if, when the court understood originally you were trying to surcharge the man himself, he didn't draw the same conclusion; and apparently Mr. Whyte did.

But it became apparent in this trial settling the Receiver's fees that the attempt is to surcharge the fund, [393] or, as I stated originally, to surcharge Mrs. Tidwell instead of taking it out of the pocket of the Receiver.

Now, has it all been stated clearly?

Mr. Enright: I think so, your Honor. I would like to analyze the record." [R. 617-619.]

"Mr. Whyte: I would like to inquire of the court and [459] inquire of Mr. Enright, whether there is any intention now to shift the position which was expressed this morning, when Mr. Fussell was here, to the effect you were not seeking to charge the surcharge to the Receiver personally for any of these claimed items.

Now, is that correct, Mr. Enright?

The Court: I understand Mr. Enright is seeking to charge the fund which is in the Receiver's possession.

Mr. Whyte: Very well.

The Court: Is that right, Mr. Enright?

Mr. Enright: Yes." [R. 685-686.]

Consequently, there is no issue before this Court with reference to any attempt to surcharge the Receiver, and Specifications of Error, Nos. 3 and 8, appearing at pages 47-48 of Richman's opening brief, should be disregarded insofar as they allege error below in failing to surcharge the Receiver.

On November 19, 1954, the District Court signed and filed a final order settling the Receiver's account, fixing fees, and distributing the funds in the hands of the Receiver. [R. 190-196.] In this order the court found the first and final report of the Receiver to be true and correct. [R. 193.] The court further found the sum of

\$6,000 to be the reasonable value of the Receiver's services and the sum of \$1,800 to be the reasonable value of his attorney's services, and it fixed their respective fees at such amounts. [R. 194.] The court also directed that the Receiver reimburse himself from the monies in his possession to the extent of \$89.20 paid by him for copies of the depositions used at the hearing on his report and petition for fees and his counsel's petition for fees. [R. 195.]

Appellant Richman has appealed from the whole of this order of November 19, 1954. [R. 196-197.]

STATEMENT OF THE CASE (Continued).

II.

Topical Statements.

A. Alleged Representations—Receiver's Ability, Experience and Availability.

At pages 16-19 of his opening brief Richman strives to create the impression (which, as we shall see, is wholly unwarranted) that at the hearing on November 30, 1953, at which the District Court announced its intention to appoint Hallberg as Receiver, Hallberg made certain representations, some or all of which were untrue. To this end he quotes several statements made by the court on that occasion (Richman's Op. Br. pp. 16-19) but mentions no statements made by Hallberg, except that the Receiver "chimed in" with the remark "That is correct" at the close of one of the court's observations (Richman's Op. Br. p. 17), affirmed that he had a place of business in Pasadena (*Idem*, p. 19), and responded in the affirmative to the court's inquiry as to whether he lived at Corona del Mar. (*Idem*, p. 19.) While the trial court was of the opinion that the Receiver had made no represen-

tations ("The Receiver didn't come to the court and make any representation") [R. 235], to the extent that such "chiming in," such affirmation, and such response may possibly be construed as representations by the Receiver, they were truthful in every particular.

Insofar as they contained any declarations of fact, the court's observations to which Hallberg replied, "That is correct," were as follows (Richman's Op. Br. p. 17):

"The Court: . . .

". . . I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some years was in the management of real properties, sometimes in connection with court receiverships, and that your experience in it locally has been in the management of your own real properties, which were of income nature, and of similar properties owned by either you or your wife's relatives.

Mr. Hallberg: That is correct."

During the years 1930-1931, in Chicago, Illinois, Hallberg's main vocation was the management of real properties in connection with a court receivership. [R. 377-378, 381-383, 465-466, 884-885.] He also had local experience in the management of real properties of an income nature owned by himself and his wife, consisting, among others, of a 16 unit apartment building in South Pasadena and a four family unit in Pasadena. [R. 369-370, 881-882, 889-891.]

Furthermore, his affirmation that he had a place of business in Pasadena was perfectly truthful inasmuch as the four family unit owned by him and his wife in that city certainly qualifies as a place of business. As for his affirmative response to the question of whether he lived at Corona del Mar, that was the fact. [R. 255.]

It is significant to note that at this same hearing on November 30, 1953, Richman's counsel expressed his complete confidence in the Receiver's integrity and ability when he stated, "I am satisfied that your Honor would not have selected anyone except a man of not only integrity, but of ability." (Richman's Op. Br. p. 18.) It is of further significance to note that before appointing Hallberg as the Receiver the Trial Court invited counsel for both Richman and Tidwell to ask the Receiver any questions they wished, but no questions were asked. [R. 210-216, 259.]

B. Petition to Disqualify.

On April 30, 1954, prior to the hearing on the Receiver's report and petition for fees and the petition of his attorney for fees, appellant Richman filed a petition to disqualify Honorable Ernest A. Tolin, the District Judge, upon the ground that the Judge was a material witness to the determination of what fees should be paid the Receiver in that the Receiver had made certain allegedly false representations to the court before his appointment when the court was interviewing him with respect to his availability, experience and qualifications. [R. 158-164.] The petition to disqualify further alleged that it would be necessary for Richman to call the Trial Judge as a witness to these alleged misrepresentations. [R. 162.]

As we have just seen, if the Receiver can be said to have made any representations to the court before his appointment, his statements were entirely truthful. Moreover, everything said at the hearing at which it is claimed that the Receiver made such representations was transcribed by the court reporter and is a part of the record on this appeal. [R. 202-216.] The Receiver never repudiated any portion of the transcript of that hearing.

Under these circumstances it would have been wholly unnecessary for Richman to have called the Trial Judge as a witness to any alleged representations made by the Receiver at the hearing.

C. Receiver's Availability and Earnings.

With respect to Hallberg's availability to act as Receiver, the record reveals the following:

At the time he took his oath of office as Receiver on December 2, 1953, Hallberg did not know that he would be employed by the County of Orange. [R. 363, 378-379, 355-357.] His work for the County did not begin until December 7, 1953. [R. 326.] He had no definite hours of employment but was merely required to put in a 40 hour week of eight hours a day, Monday through Friday. [R. 327-328, 335, 343, 346-347.] About half of his work consisted in the preparation of data with regard to assessing and appraising; such work could be done outside the office or at his home in the evenings. [R. 356-360.]

At the time it appointed Hallberg as Receiver the District Court envisaged his job as only "part-time employment." In this connection the court said:

"The Court: . . .

.

Knowing that Mr. Richman had carried on other ventures [19] while he managed these properties, I thought that while it would be part time, it would be a substantial part-time employment, and having confidence in the man's integrity and ability, I asked him if he would serve and he said he would." [R. 257-258.]

Concerning the time which he personally spent on the receivership, Hallberg testified as follows:

“Q. (By Mr. Enright): Actually, the physical method of operation was that commencing December 7th and all through February 28th, and you would make trips up to Los Angeles on the weekends or come up Friday night after completing your work for the County of Orange, isn't that right? A. I came up during the week. I came up Friday, it is true. I was there Saturday. I was even there on Sunday.

Q. Friday evening, Saturday and Sunday? A. During the week I was there on various occasions.”
[R. 434-435.]

“Q. Well, generally, didn't you do your checking on the operation of these apartments on the week end, [89] Mr. Hallberg? A. I did some of that.

Q. I mean, that was the rule, wasn't it? A. Not necessarily.

Q. You'd come in on week ends, Saturdays and Sundays? A. Not necessarily. I came in during the week some evenings, as well as days. * * *”
[R. 905.]

When one of the apartment house managers was asked on how many occasions she had seen Hallberg during the three month's period of the receivership, she replied:

“A. I would say between seven, not less than twelve times; perhaps seven, eight or nine times.”
[R. 503.]

Another apartment house manager, who testified that she saw Hallberg on only three occasions during the receivership [R. 476-477], admitted that she was frequently off-duty, either in her room or away from the building,

in which event she would not have seen the Receiver. [R. 477-479.]

During the entire course of the receivership Hallberg had the assistance of a full-time bookkeeper [R. 270]; first, Mr. Harrison, who had been Richman's secretary and bookkeeper [R. 410-411], and then Miss Findeisen. [R. 270.] He also was materially assisted throughout by his wife, who represented him in many of his contacts with the apartment house managers and with various service and trades people. [R. 263-264.] In addition Mrs. Hallberg supervised the decorating of apartments, made periodic trips to collect the rents and deposited them in the bank, purchased supplies, and helped with the book-keeping. [R. 263-265, 267-268.] She received no compensation for any of her services to the receivership. [R. 269.]

At the same time that he was managing the affairs of the Richman Trust from 1945 to 1953, Richman was carrying on a private law practice in the City of Los Angeles, which included such matters as the organization of corporations, the preparation of tax returns, and the drafting of contracts. [R. 528-529, 713-714.] During his last year as manager of the Richman Trust, he devoted considerable time to preparing for and attending the trial of Mrs. Tidwell's action against him to terminate the Trust. [R. 714-715.] From January, 1950, until after the Trust was terminated, he also acted as President of the Consolidated Mortgage Company. [R. 731-732.]

With respect to Hallberg's earnings and experience prior to the receivership (exclusive of his accounting experience, which will be mentioned later), the record reveals the following:

He majored in business administration at Northwestern University where he received the degree of Bachelor of Science and Commerce in 1927. [R. 290.] From 1930 to 1931, in Chicago, Illinois, he was employed by a receiver on a full-time basis to manage certain real properties in receivership. The properties consisted of from 40 to 50 buildings, including apartments, a large apartment hotel, flats, bungalows, and residences. One of these buildings, an apartment hotel, was quite similar to the Oliver Cromwell apartment building in the Richman Trust. The buildings as a whole were of about the same class as the Richman Trust buildings. [R. 377-378, 381-383, 465-466, 884-885.]

For a period of 13 years before January 1947, he was employed by the Garrett Company, wine merchants in New York. [R. 367-368.] During his last three or four years with this company he received an annual net compensation (before taxes) of \$40,000. [R. 891-892, 367-368.] He came to California about January 1947, as Western Regional Sales Manager for Refrigeration Corporation of America at a salary of \$10,000 a year, plus an override based on volume. [R. 875.] From the time of his arrival in California in 1947, until he moved to Orange County in 1952, he resided in the City of Pasadena. [R. 367-368.] He remained with Refrigeration Corporation of America for about two years, when the company dissolved. [R. 875.]

About 1949 Hallberg began having trouble with his back—for months he was in bed and in the hospital—and accordingly his employment record from then until the time of the receivership was spotty. [R. 875-876, 366-367.] Nonetheless, he received a yearly salary of \$20,000 while employed by Hall Industries, a seller of curtain rods, from October 1948 to April 1951. [R. 879-881.] About

December 1949, he and Mrs. Hallberg purchased a 16 unit apartment house in South Pasadena, which they held for approximately 11 months, and in which they installed Mrs. Hallberg's mother as manager. [R. 369-370, 889-890.] Hallberg himself performed many of the managerial duties [R. 369-370] and even did hard physical work on the premises, including painting, carpeting, hanging doors, laying floor tile, and repairing the roof. [R. 463-464, 910-911.] About January 1951, Mr. and Mrs. Hallberg also purchased a four unit apartment building in Pasadena, which they still own. [R. 370, 882, 890-891.]

Mrs. Hallberg received the degree of Bachelor of Business Administration from the University of Minnesota in 1932. [R. 516.] For a time she was one of two women investment counselors in New York. [R. 516.] She took a year's course in color consulting at the Traphagen School of Design in New York and was color consultant for certain properties in that city. [R. 517, 385.] She holds a real estate broker's license in California. [R. 269, 270.]

D. Receiver's Services.

The Receiver's active duties with regard to the management and operation of the former Richman Trust began about December 1, 1953, and continued until February 28, 1954. [R. 255.] The nature of the services performed by him during this period is too varied and extensive to relate in detail, but in general it consisted in handling the myriad problems which arise in connection with the operation of five large apartment houses, such as maintenance and renovation of the buildings, collection of rents from tenants, the employment and discharge of personnel, making provision for various types of insurance, preparation and filing of a tax return, keeping of

books of account (the Receiver set up a new and improved bookkeeping system), and the purchase of supplies; as well as in conferring with representatives of government agencies, inspecting the buildings from time to time to determine whether their physical plants were in good working order, comparing the rentals with other apartment buildings in the neighborhood, and appearing in court at various hearings. [R. 77-84, 261-262, 281-284, 287-290, 293-295, 892-896, 912-913.]

On February 26, 1954, the District Court made its order relieving the Receiver "of his active duties of management, control and possession of the assets known as the Richman Trust, as of five o'clock p. m., Sunday, February 28, 1954," and directed the Receiver to "give over control and possession to Lyda Tidwell, plaintiff, of all the assets of the said Richman Trust, excepting money in bank and under the control of the said Receiver, . . ." [R. 56.] On the same day the Receiver was informed of the sum and substance of this order by his attorney. [R. 417-419.]

In his statement of the case Richman asserts in substance that the Receiver violated the terms of this order in at least three particulars, to wit:

1. He failed to retain control of the petty cash fund of \$785 in the hands of the apartment house managers.

2. He failed to collect from the managers the rents which had been collected by them on February 26, 27, and 28, 1954.

3. On February 27, 1954, he made a monthly payment of \$2,027.25 on a trust deed on one of the apartment houses which was not due until March 1 of the same year. (Richman's Op. Br. pp. 31-32, 43-44.)

A proper understanding of the facts will show that the Receiver did not violate the terms of the above mentioned order in any one of the particulars specified.

First, with respect to the minor amounts of petty cash in the hands of the managers, totalling \$785, these funds were used to pay small day-to-day expenses, such as key refunds, salaries of extra help, gratuities to persons removing cans or other "stuff" from the apartment buildings, etc. [R. 480-482, 419-420.] These funds were not lost or dissipated but were simply left in the buildings and became the property of Mrs. Tidwell when she took over their control and possession as of 5:00 P.M. on Sunday, February 28, 1954. [R. 420-421.] The Receiver did not take possession of these funds for the good and sufficient reason that they were a part of the working properties of the buildings [R. 420-421] and therefore necessary to their continued operation. In this regard the Trial Court declared in substance in its memorandum to counsel, dated October 5, 1954, that the petty cash fund existed merely "as an operating incident of each apartment house so that the resident managers would have available small sums of money for the purposes that are common to the day-to-day business transacted by resident apartment house managers." [R. 182, 185-186, 188.]

Second, with respect to the rents collected by the managers on Friday, Saturday and Sunday, the 26th, 27th and 28th of February 1954, they amounted to \$1,290.59. [R. 601.] Hallberg did not collect these monies from the managers for two cogent reasons: (1) the period in question being a week end, the banks were closed, and inasmuch as the Receiver's office had no safe there was no facility available for their secure deposit except the safes at the apartment houses [R. 910]; and (2) Hall-

berg was prevented from collecting them by reason of the fact that Mr. Udall, Mrs. Tidwell's agent, made the rounds of the apartment houses on Sunday, February 28, told the managers that he was in charge, and collected these monies himself. [R. 932-933, 420, 429-430.] In this connection it appeared that these monies represented payments made by tenants in advance on account of their rent due on the first of March [R. 182-183], wherefore these funds rightfully belonged to Mrs. Tidwell under the terms of the aforesaid order of February 26, 1954.

Third, with respect to the payment by Hallberg on February 27, 1954, of an installment on a trust deed not due until two days later [R. 423], it should be observed that under the language of the Court's order of February 26, 1954, the Receiver's "active duties of management, control and possession of the assets known as the Richman Trust" continued until 5:00 of the afternoon of February 28. [R. 56.] Thus, at the time he made the payment on February 27, he had ample power to do so. Moreover, the Trial Court was of the opinion that it was not unwise of him to pay a debt of the receivership two days in advance of its due date. [R. 186, 868-869.] It is significant to note that during his term as manager of the Trust Richman himself sometimes made the payments on the same trust deed in advance of their due date. [R. 535-536.]

In conclusion, it should be noted that not one penny of any of the three items discussed above was lost or dissipated. Thus, even if it be assumed for purposes of argument that the Receiver did commit some technical violation of the Court's order of February 26, 1954 (an assumption which we believe to be wholly unwarranted), such violation was productive of no harm to anyone.

E. Accounting Services and Experience.

As previously stated, the Receiver always employed a full-time bookkeeper during his term as Receiver. [R. 270.] For about two-thirds of that term the bookkeeper, Mr. Harrison, was the same bookkeeper who had kept the Trust books while Richman was managing the assets. [R. 270, 410-411, 533.] Hence, insofar as bookkeeping problems were concerned, the Receiver's duties were mainly supervisory.

Hallberg had had sufficient accounting training and experience to render him capable of exercising such supervision. In his college days at Northwestern University he took two years of accounting and did part-time accounting work while going to school. [R. 911-912.] He had two years public accounting in the field in Chicago. [R. 737.] He had the "complete management" of the 40 to 50 buildings in receivership in Chicago in 1930-1931 [R. 377-378, 381-383, 884-886], which presumably must have included supervision of their books of account. He also did some of the bookkeeping for Morgan Construction Tooth Corporation in 1951 [R. 448-449, 878], and apparently he set up the books for Hall Industries [R. 737] with whom he was associated from October 1948 to April 1951. [R. 879-881.]

Insofar as Richman may be attempting to discredit the Receiver and his counsel for not having filed an accounting within 60 days after the Receiver's appointment, as required by Rule 18(b), Local Rules Southern District, California (Richman's Op. Br. p. 33), the Trial Court completely absolved Hallberg and Whyte from any blame in this regard. [R. 868.]

F. Refrigeration Breakdown.

Richman's partially unsupported and much distorted statement of the case, under this subdivision seeks to show that Hallberg was remiss in the performance of his duties as Receiver with respect to this refrigeration problem. It is only necessary to exhibit the facts in their proper perspective in order to refute any such charge against Hallberg.

About the middle of January 1954, trouble developed with the refrigeration equipment at the Western Arms apartment building. [R. 284.] In accordance with instructions previously given her by the Receiver, the manager called representatives of the California Refrigeration Company who went to work on the matter promptly. [R. 284.] A report of the trouble was made to the Receiver on the evening of the same day, and he was told that the refrigeration repairmen were on the job. [R. 285.] Before noon of the following day the Receiver began conversations with the representatives of two refrigeration companies and instructed one of these companies to finish the job of repair. [R. 286, 435-439.] The Receiver personally visited the apartment house two days after the breakdown and found the refrigeration system working perfectly. [R. 435-436, 525.]

G. Air Pollution—Criminal Citation.

Here, again, it is only necessary to state the facts fully and accurately in order to demonstrate that the Receiver and his attorney acted properly and prudently in handling an air pollution problem resulting from a defective incinerator at the Oliver Cromwell. The sequence of events was as follows:

About December 3, 1953, Richman turned over to the Receiver certain contracts which he had made with Air Pollution Control, Inc. for the installation of air pollution control equipment in the incinerators at the Oliver Cromwell and Canterbury apartment houses. [R. 387.] About December 10, the Receiver received an authorization from the County of Los Angeles for the installation of such equipment [R. 387-388], and not long afterwards he received engineering drawings of the equipment to be installed by Air Pollution Control, Inc. [R. 388.]

On December 24, 1953, the Receiver asked his attorney to examine these contracts. [R. 940, 388.] The attorney did so and returned them to the Receiver about December 30, at the same time orally advising the Receiver that "the contracts were valid and binding, that they should be carried out." [R. 556-557, 388-389, 753, 941.]

About January 1, 1954, the Receiver instructed his bookkeeper, Harrison, to mail the engineering drawings to Air Pollution Control, Inc., which Harrison failed to do. [R. 753, 405-406, 518-519.] Subsequently, about January 13, the Receiver received a notice from the Los Angeles County Air Pollution Control District charging that the Oliver Cromwell was violating Section 24242 of the California Health and Safety Code by discharging excessive smoke from its incinerator. [R. 711, 388-389.] Shortly after receipt of this notice Harrison telephoned Mr. Manalis, the vice-president of Air Pollution Control, Inc., and instructed his company to proceed with the installation at the Oliver Cromwell. [R. 646, 519-520.] With regard to the notice from the Air Pollution Control District, Manalis told Harrison that he "would take it up with the Air Pollution Control Authority, we weren't to worry, and he would take care of it." [R. 520, 405.]

On January 22, 1954, Hallberg found the drawings for the air pollution control equipment at his office at the Oliver Cromwell [R. 642], Harrison having failed to carry out the instructions given him about the first of the month to forward them to Air Pollution Control, Inc. [R. 753, 405-406, 518-519]. Hallberg immediately wrote a letter to Air Pollution Control, Inc. enclosing the drawings. [R. 646-647.]

Either on January 27 or January 29, 1954 (the record is not clear), a criminal complaint was issued by the County of Los Angeles naming Richman and one of the apartment house managers as defendants. [R. 406-407.] In any event the record is clear that Whyte had no knowledge that Richman had been named as a defendant in the complaint until January 29, when he was so advised by Harrison. [R. 558, 639-641, 940.] Whyte immediately tried to get in touch with Richman and his counsel but was unable to locate either of them, whereupon he left word at Richman's office between 4:00 and 5:00 P. M. on January 29, concerning the pendency of the suit and the fact that a hearing therein had been set for the morning of February 1. [R. 407.] Mr. Joseph T. Enright, representing ^{Richman, and Whyte, repre-} ~~Whyte, representing the Rich-~~
~~man, and~~ ^{senting, the} apartment house manager, appeared at the hearing, and upon their joint request the matter was continued. [R. 960-961.] Thereafter, at a conference on February 9 with the representative of the Los Angeles City Attorney's Office in charge of the case, Hallberg, Whyte and Richman's counsel persuaded him to dismiss the suit. [R. 965-966.] At no time was anyone fined or was any financial penalty exacted from the Trust assets on account of the filing of the suit or delay in installing the air pollution control equipment. [R. 753.]

A final key fact, which is vital to any fair statement of the facts under this heading and which does not appear in Richman's brief, is the admission by Mr. Manalis of Air Pollution Control, Inc. that for a period commencing from ten days to two weeks before January 15, 1954, and continuing until three or four weeks after January 15, 1954, a particular type of metal needed for the installation of the air pollution control equipment at the Oliver Cromwell and the Canterbury was not available to his company, wherefore the company was unable to make the installation during this period in the absence of such metal. [R. 704-707, 709, 547-549.] Hence, even if it be assumed that Hallberg and/or Whyte failed to act as reasonably prudent men in dealing with the matter under consideration (an assumption which, as we have seen, is not supported by the facts), any failure on their part to conform to standards of due care was not the proximate cause of the issuance of the criminal complaint for the reason that even if they had they acted with all possible skill and dispatch, the installation still could not have been made before the complaint was issued because Air Pollution Control, Inc. did not have the necessary materials to make the installation.

H. Receiver's Fees.

At the beginning of this subdivision of his statement of the case Richman devotes several pages of his brief to an effort to make capital of the fact that the Receiver did not specify in his petition for fees the amount of the fee he was asking for, as required by Rule 18(c), Local Rules Southern District, California. (Richman's Op. Br. pp. 37-40.) The District Court explained this failure to abide by the Local Rule by declaring that it had given permission to the Receiver and his counsel in preparing

their petitions for fees that "if they wanted to leave it to the court to determine a reasonable amount that the court would not insist upon compliance with the rule that an amount shall be prayed for. But they could leave it as reasonable or they would state a specified amount." [R. 254.] The District Court further asserted that "I felt at the time . . . that asking for reasonable fees and leaving it to the court to determine what they should be upon hearing the evidence was the better practice." [R. 625.]

There is abundant evidence in the record to sustain the Trial Court's finding that the reasonable value of the Receiver's services is the sum of \$6,000. [R. 194.] In this connection the court heard the testimony of Mr. Jefferson Mann, a licensed real estate broker and real estate appraiser, who for 21 years was connected with R. A. Rowan & Co. in Los Angeles, the second largest real estate management firm in the West. [R. 298-299.] After first being qualified as an expert witness with respect to the management of real estate, including apartment buildings, and the compensation paid for such management in the Los Angeles area [R. 298-299, 308-310], Mann testified that based on the size of the receivership estate (it was valued at approximately \$1,200,000) [R. 724], the duties performed by the Receiver, his education and past employment, the size of his bond (\$75,000) [R. 25-26], and the amount of gross receipts during the period of the receivership (\$94,153.59) [R. 105], he was of the opinion that the reasonable value of the Receiver's services was 5% of gross income, or \$4,707.67. [R. 301-306, 316, 324-325.]

Although the fee allowed by the District Court was about \$1,300 in excess of this figure, the Court was amply justified in increasing the amount of Mann's estimate.

In explaining why it fixed the Receiver's fee at \$6,000, the Trial Court stated:

"The Receiver has not prayed for a specific sum in compensation for his services but has set forth in detail what his services consisted of and prays for reasonable fees. The Court bears in mind that Defendant has testified that ten per cent of the gross income was a reasonable management fee when Defendant rendered the management service. In procuring the contract with Plaintiff for that fee, there was an over-reaching and undue influence. That fee was excessive. The Court bears in mind, also, that there is evidence in the record that various percentages including five per cent and six per cent would be a reasonable management fee. The Receiver in this instance acted as a property manager with the obligations of full trustee and of an officer of the Court. Mr. Richman, with whom he had to deal, is a person given to hostile and aggressive attitudes. It is evident that he exercised these in his relations with the Receiver. The Receiver was obliged to go through the problem of setting up his own management plan. [234] He was only allowed to execute the plan for a brief period before the receivership was abruptly terminated. He was placed in possession hurriedly and he was terminated abruptly. It then became necessary for him to file an accounting, and the accounting procedure was exhausted to its ultimate in searching into the conduct of the Receiver during and even before his stewardship. He spent several days in Court defending the administration of his trust and undergoing a most critical and insulting scrutiny of his every act and omission in his administration. The Receiver's fee is fixed in the sum of \$6,000.00, that being the reasonable value of his services, with some consideration given to the greater than usual vexation which was visited upon

him and the labors of making up his accounting and explaining and defending it in Court. The Court finds it to be a true and correct account." [R. 186-188.]

As to the manner in which the Receiver was treated by Richman and his counsel, the Court remarked:

"The Court: . . .

"He was brought before the court almost as if he were accused of a crime here and was treated by some of the parties to the suit, or by one of the parties to the suit and one of the attorneys to the action with less respect than I have seen embezzlers treated when I was handling the criminal calendar of the court." [R. 857-859.]

On pages 41-42 of his opening brief Richman attempts to compare the total amount of expenses incident to the operation of the receivership, including fees allowed the Receiver and his attorney, with the amount which would have been paid to him under his contract with the Trust had he been managing the assets during the period of the receivership. He concludes that the receivership expenses were about \$400 more than they would have been had he remained in control. Apparently the purpose of this comparison is to show, if he can, that the fees of the Receiver and his attorney are too high.

Wholly apart from the fact that several of the figures upon which he bases his calculations are not supported by the record,⁶ and the further fact that he fails to mention certain items which would have increased the Trust expenses had he been in the saddle during the period

⁶E. g., see the paragraph immediately following the quoted material on page 42 of his opening brief.

of the receivership [R. 605-606], his comparison is misleading and of little value. This is true because the Receiver's duties were much more burdensome than they would have been had he, like Richman, been in control of the assets for an extended period and thus had had time to put the Trust affairs on a normal well-oiled day-to-day basis. Here, however, the Receiver was confronted with the task of taking possession of unknown properties and familiarizing himself with them, installing his system of management and setting up his books, and then, only three months later, being compelled to close the books and surrender possession of the assets.

I. Objections to Receiver's Report.

We have already discussed all of the items mentioned in this subdivision of Richman's statement of the case under previous headings, except (1) the failure to pay Richman's claim in the sum of \$3,104.22, and (2) the alleged failure by the Receiver to account for a \$400 deposit on Workmen's Compensation and an alleged refund thereon of \$158. (Richman's Op. Br. p. 44.)

With respect to (1) above, although Richman did claim that he was entitled to a management fee of \$3,104.33 for his services to the Trust in November, 1953, Hallberg never received a bill or other communication from him stating that this amount, or any other amount, was due him. [R. 426-427.] Actually it would have been most unwise for the Receiver to have paid this claim inasmuch as the District Court later held that the amount claimed was based on a charge of 10% of gross income of the Trust as fixed by a contract under which the Trust had been established, and that because the Trust had been set aside for undue influence, the contract rate was no longer applicable and Richman was entitled

to payment on a *quantum meruit* basis only. [R. 182-183.] The Court ultimately fixed Richman's management fee for such service at \$1,862.60, or 6% of the gross revenues of the Trust in November, 1953. [R. 194-195.]

With respect to (2) above, the Receiver did account for the \$400.00 deposit on Workmen's Compensation. [R. 107.]⁷ As for the Receiver's alleged failure to account for a refund on this deposit, he could not have done so because no refund was shown to have been received by him during his term as Receiver. [R. 661-662; 667-669.]⁸

J. Attorney's Fees.

Strangely enough, this subdivision of Richman's statement of the case does not challenge as unreasonable the fee of \$1,800.00 actually allowed the Receiver's attorney but instead attacks the amount prayed for in the attorney's petition for fees, namely, \$3,000.00 for ordinary services and an unspecified amount for extraordinary services, as being excessive. (Richman's Op. Br. pp. 44-46.) That the sum of \$1,800.00 which was in fact allowed is an exceedingly modest fee is shown by the following facts:

The attorney's original petition for fees, filed March 18, 1954, sought an allowance of fees for services performed by him on behalf of the Receiver from about December 1, 1953, to and including March 17, 1954. [R. 58, 74.] The services rendered during this period consisted, among

⁷The statement at page 44 of Richman's opening brief that the Receiver did not account for this item is just another illustration of the inaccuracy and unreliability of his brief.

⁸The assertion on page 44 of Richman's opening brief that the Receiver turned the refund "over to appellant Tidwell. [R. 664.]" has no support in the record.

others, in advising the Receiver or his agents, on an average of at least three days a week during the entire three month's period of the receivership, with respect to numerous problems connected with the administration of the receivership; preparing petitions, such as a petition for authority to pay Christmas bonuses and a petition for authority to renovate individual apartments; court appearances in obtaining approval of such petitions; frequent telephone calls from and to the attorneys for Richman and Tidwell regarding the progress of the receivership and problems incident therein; conferences and a court appearance in connection with the dismissal of the criminal complaint hereinbefore discussed under subdivision G; conferences regarding termination of the receivership; and preparation of the Receiver's first and final report and petition for fees. [R. 60-72, 541-542, 951-967.] Whyte had practiced law in Los Angeles for more than 12 years prior to his appointment as attorney for the Receiver. [R. 967-968.]

On May 12, 1954, Whyte filed his supplemental petition for fees for the period commencing March 18, 1954, to and including May 10, 1954. [R. 164-170.] These services included, among others, representing the Receiver upon the taking of his deposition and conferring with him and his wife and with other potential witnesses in preparing his defense to Richman's attack upon his report and petition for fees. [R. 166-169.]

As previously noted, the hearing on the Receiver's report and petition for fees began on May 12, 1954, and lasted for four and one-half court days, excluding final argument. [R. 246, 265, 340-341, 416-417, 439, 540, 613, 635, 700-701, 755.] Except for a part of one afternoon session [R. 540-571]_b and a part of one morning ses-

sion [R. 614-629] when the subject of Whyte's fees was under consideration, the hearing was devoted exclusively to defending the Receiver against the attack on his report and petition for fees and to laying a foundation for determining the reasonable value of his services. Whyte acted as the Receiver's attorney throughout the hearing.

Hubert F. Laugharn, Esq., a Los Angeles attorney specializing in bankruptcy and liquidation matters, was qualified as an expert witness with regard to receivers and receiverships. [R. 559-561.] Upon the basis of the facts alleged in Whyte's original and supplemental petitions for fees, and in view of the size and extent of the receivership estate, and the problems encountered during the receivership, Laugharn expressed the opinion that compensation of \$1,000.00 per month for each of the three months of the receivership would not be excessive. [R. 561-565, 568.]

With reference to the compensation due Whyte for defending the Receiver in court against Richman's attack on the Receiver's report and petition for fees,^{8a} Paul Fussell, one of the senior partners in the Los Angeles law firm of O'Melveny & Myers, was qualified as an expert witness [R. 614-616] and testified that based upon the size of the receivership estate, the objections made by Richman to the Receiver's report and petition for fees, and the time consumed by Whyte in defending such report and petition for fees against Richman's attack thereon, he was of the opinion that the reasonable value of Whyte's services in conducting the defense was between \$1,000.00 and \$1,200.00. [R. 616-619.]

^{8a}Whyte has never sought compensation for the time spent by him in defending his own petition for fees against Richman's attack thereon. [R. 624.]

Whyte is criticized at pages 44-45 of Richman's opening brief for having allegedly given improper advice to the Receiver, three asserted instances of such allegedly improper advice being specified, to wit:

(1) He and the Receiver took over the Trust's bank account and requested managers to turn over money to them, and in fact collected money from one of the managers, before the Receiver was appointed.

(2) Whyte failed to advise the Receiver that non-performance of the contracts with Air Pollution Control, Inc. might result in criminal prosecution.

(3) He allegedly erroneously assumed that Richman had no right to contact the Receiver's bookkeeper, Mr. Harrison, concerning the Trust property or the acts of the Receiver.

These points will be answered briefly and in their listed order.

As to (1), the Receiver was appointed by a court order made and filed on November 30, 1953. [R. 21-25.] The steps allegedly taken by the Receiver and his attorney were taken on December 1, 1953, after the Receiver's appointment. [R. 552, 947-948.] The only action taken at the bank was to transfer the former Richman Trust account to the Receiver's name. [R. 552.] This was an urgent matter. [R. 554-555.]

It is true that the Receiver did not file his bond and take his oath of office until December 2. [R. 25-26.] Technically, therefore, the Receiver and his attorney had no authority to take any of the steps which they did take on December 1. Richman does not contend, however, nor is there any evidence in the record to show, that the slightest harm resulted to anyone from such action or that one cent of the money collected from the apartment house manager was not accounted for. We may well inquire

whether such petty fault finding does anything more than waste the time of this Court.

As to (2), why should Whyte have advised the Receiver that non-performance of the contracts with Air Pollution Control, Inc. might result in criminal prosecution? About December 30, 1953, he told the Receiver that the contracts were binding and instructed him to carry them out, "to go ahead." [R. 388, 556-557, 753.] He had no reason to believe that his instructions would not be, or were not being, obeyed. He was not informed at the time that performance of the contracts for installation of the pollution control facilities was being held up during the month of January, 1954. [R. 943.] Neither was he advised that the Receiver had received the notice issued by the Air Pollution Control District on January 13, 1954. [R. 543-544.] The first time he knew or reasonably could have suspected that anything was wrong was on or about January 27, when he learned from Harrison that a criminal complaint either was or was about to be issued. [R. 557-558.]

Finally, as to (3), what difference does it make whether Whyte assumed, either rightly or wrongly, that Richman had no right to contact Harrison, the Receiver's bookkeeper? It is not contended that Whyte ever took any action in reliance upon his assumption or that Richman was prevented from obtaining the information he desired.⁹

⁹Actually Whyte had every reason to assume as he did. The court's order appointing the Receiver expressly forbade Richman from "interfering directly or indirectly, with the administration of the receivership." [R. 24.] Calling on the Receiver's employee and questioning him about matters pertaining to the receivership, without first obtaining the permission of the Receiver or his counsel to do so [R. 641-643], would clearly appear to be an indirect interference with the administration of the receivership.

The Issues Presented.

The principal issue presented on this appeal with reference to the Receiver and his attorney is as follows:

Did the District Court abuse its discretion in awarding a fee of \$6,000.00 to the Receiver and a fee of \$1,800.00 to his attorney?

There are two other minor issues, to wit:

(1) Did the District Court err in ordering the Receiver to reimburse himself from the moneys in his possession to the extent of \$89.20, paid out by him for copies of his deposition and that of his deposition and that of his attorney, said depositions having been taken by Richman and used at the hearing on the Receiver's report and petition for fees and the petition of his attorney for fees?

(2) Did the District Court err in refusing to disqualify itself to settle the Receiver's account and to award fees to the Receiver and his attorney?

Summary of Argument.

1. The District Court did not abuse its discretion in awarding a fee of \$6,000.00 to the Receiver and a fee of \$1,800.00 to his attorney.

2. The District Court did not err in ordering the Receiver to reimburse himself from the moneys in his possession to the extent of \$89.20, paid out by him for copies of his deposition and that of his attorney.

3. The District Court did not err in refusing to disqualify itself to settle the Receiver's account and to award fees to the Receiver and his attorney.

ARGUMENT.

I.

The District Court Did Not Abuse Its Discretion in Awarding a Fee of \$6,000.00 to the Receiver and a Fee of ^{1,800.00}~~\$18,000.00~~ to His Attorney.

It is axiomatic that the amount of compensation awarded to a receiver and his counsel is a matter within the sound discretion of the trial court and will not be disturbed upon appeal in the absence of a clear showing that the trial court has abused its discretion. (*In re Cash-Papworth, Grow-Sir* (2d Cir., 1913), 210 Fed. 24, 26; *Drilling & Exploration Corporation, et al. v. Webster* (9th Cir., 1934), 69 F. 2d 416, 418; *Venza v. Venza* (1951), 101 Cal. App. 2d 678, 680.) This principle is well stated in the case of *Venza v. Venza* (*supra*), to wit:

“The rule is well established that the compensation to be allowed receivers and their attorneys is primarily within the sound discretion of the trial court. This is necessarily so, for, as the court stated in *Kan v. Tsang*, 90 Cal. App. 2d 538 [203 P. 2d 86], the trial court is ‘in a better position to know the necessity for the services performed by the receiver and his attorney and to assess their reasonable value’ (p. 541) than is a reviewing court. Thus, it follows that in the absence of a clear showing of an abuse of discretion by the trial court this court would not be justified in interfering therewith. (*Adams v. Woods*, 8 Cal. 306, 322.) We conclude that the record does not disclose such a showing by defendants.” (P. 680.)

The trial court can not be said to have abused its discretion where there is substantial evidence in the record to support its finding as to the reasonableness of the

amount allowed. (*Estate of McLaughlin* (1954), 43 Cal. 2d 462, 465-466 (trustees' fees); *Estate of Griffith* (1950), 97 Cal. App. 2d 651, 655 (trustee's fees); *Re Dehner's Estate* (1941), 230 Iowa 490, 298 N. W. 656, 657 (attorney's fees).) This rule is well expressed in *Estate of McLaughlin* (*supra*), a recent decision by the Supreme Court of California, stated in the following language:

"Pursuant to section 1122 of the Probate Code,* the trustees must be allowed 'such compensation for services as the court may deem just and reasonable.' The allowance rests in the sound discretion of the trial court, whose ruling will not be disturbed on appeal in the absence of a manifest showing of abuse. (*Estate of McLellan*, 8 Cal. 2d 49, 55 [63 P. 2d 1120]; *Estate of Mills*, 119 Cal. App. 2d 8, 9 [258 P. 2d 1028]; *Estate of Willardson*, 101 Cal. App. 2d 777, 780 [226 P. 2d 369].) The trustee must present to the trial court satisfactory evidence of the accuracy and propriety of the items in his account (*Purdy v. Johnson*, 174 Cal. 521, 527 [163 P. 893]; *Estate of McCabe*, 98 Cal. App. 2d 503, 505 [220 P. 2d 614]); but the sole question before an appellate court when the fee allowed him is attacked as excessive is whether there is substantial evidence to support the trial court's finding. (*Estate of Griffith*, 97 Cal. App. 2d 651, 655 [218 P. 2d 149].) A finding that such a fee is a reasonable one states the ultimate fact in issue and is formally sufficient. (*Estate of Janes*,

*" 'On the settlement of each such account the court shall allow the trustee his proper expenses and such compensation for services as the court may deem just and reasonable. Where there are several trustees it shall apportion the compensation among them according to the respective services rendered. It may, in its discretion, fix a yearly compensation for the trustee or trustees, to continue as long as the court may deem proper.' "

18 Cal. 2d 512, 514 [116 P. 2d 438]; *cf.*, *Estate of Willardson*, *supra*, 101 Cal. App. 2d at 780; *Estate of Scherer*, 58 Cal. App. 2d 133, 138-139 [136 P. 2d 103].)” (Pp. 465-466.)

In its order of November 19, 1954, from which Richman's appeal herein is taken, the District Court made the following findings with reference to the reasonableness of the fees allowed the Receiver and his attorney:

“ . . . the reasonable value of the services of Roy E. Hallberg as receiver is the sum of \$6,000.00, which the Court finds to be the reasonable value of said services, and his fees are hereby fixed at the sum of \$6,000.00; the reasonable value of the services of John Whyte, as attorney for the receiver in this matter, is the sum of \$1,800.00, and his fees are hereby fixed at the sum of \$1,800.00, which the Court finds to be the reasonable value thereof.” [R. 194.]

There is ample evidence to support the trial court's finding that the reasonable value of the Receiver's services was \$6,000.00. Gross receipts collected by the Receiver during the three months period of the receivership amounted to \$94,153.59. [R. 105.] There was evidence in the record that various percentages, including 5% and 6% of gross income, would be a reasonable management fee. [R. 187, 374, 316.] Although 6% of \$94,153.59 would be \$5,649.21, and 5% of \$94,153.59 would be \$4,707.67, there were other factors present which fully justified the Court in raising the fee to \$6,000.00, or what amounts to roughly 6.3% of gross income.

In the first place, the receivership lasted only three months. The Receiver hardly had time to familiarize himself with the properties under his control and the problems incident to their operation and to install his own

system of management and bookkeeping before the receivership was terminated and he was forced to surrender possession of the assets and account for his stewardship. Naturally, this state of affairs placed a far greater burden upon him than would have resulted had he been given more time in which to put his house in order. [R. 187.]

In the second place, the Receiver was compelled to spend four and one-half days in court defending his administration of the receivership against a violent attack thereon by Richman, an attack which the District Court found to be completely unjustified. The Receiver also was obliged to devote considerable time out of court to preparing his defense to the attack on his administration and to the taking of his deposition by Richman. [R. 166-169.]

In the third place, in the words of the trial court, the Receiver was treated by Richman and his counsel "with less respect than I have seen embezzlers treated when I was handling the criminal calendar of the court" [R. 857-859], and was subjected to "a most critical and insulting scrutiny of his every act and omission in his administration." [R. 187.] The Receiver is certainly entitled to some additional compensation for being forced to submit to such indignity and abuse.

There is likewise ample evidence to support the trial court's finding that the reasonable value of the attorney's services is at least \$1,800.00. Hubert Laugharn, a well-known Los Angeles attorney with wide experience in the field of receivers and receiverships [R. 559-561], testified that compensation of \$1,000.00 a month to the Receiver's attorney for each of the three months of the receivership would not be excessive. [R. 564-565.] Paul Fussell, another prominent Los Angeles attorney [R. 614-616], testi-

fied that in his opinion the reasonable value of the attorney's further services in defending the Receiver against Richman's attack on his report and petition for fees alone was worth from \$1,000.00 to \$1,200.00. [R. 616-619.] In this connection it has been held that a trial court has authority to compensate a receiver's attorney for services rendered by him in defending his client against baseless charges of having failed in the proper performance of his duties as receiver. (*Missouri & K. I. Ry. Co. v. Edson* (8th Cir., 1915), 224 Fed. 79.

Even if the District Court had failed to make any finding with respect to the reasonableness of the amounts allowed as fees to the Receiver and his attorney, it is obvious that it was in a better position to assess the reasonable value of their services than is this Court, and unless this Court can say that the compensation allowed is not supported by the evidence, it should affirm the award. (*Kan v. Tsang* (1949), 90 Cal. App. 2d 538, 541.)

A few comments are in order respecting the cases cited by appellant Richman at pages 59-62 of his opening brief.

We have no quarrel with the statement of the considerations which should govern a court of equity in fixing the compensation of receivers, as they are set out on page 60 of Richman's opening brief in a quotation from the case of *Eames v. H. B. Claflin Co.* (2d Cir., 1916), 231 Fed. 693. Richman's brief, however, omits a portion of the language quoted from this case, which reads as follows:

"* * * The amount of a receiver's compensation does not depend upon the special qualifications or standing of the person appointed, or the demands made upon his time by private business * * *." (P. 695.)

In *Cake v. Mohun* (1896), 164 U. S. 311, 41 L. Ed. 447, cited at pages 60-61 of Richman's opening brief, the appellate court, while recognizing that it would have fixed the receiver's compensation at a considerably less amount had the matter been presented to it originally, refused to tamper with the amount fixed by the trial court upon the ground that "Great consideration will be paid to the concurring views of the auditor or master and the [lower] courts respecting a mere matter of amount." (P. 318.)

As for the case of *Walton N. Moore Dry Goods Co. v. Lieurance* (9th Cir.), 38 F. 2d 186, cited at page 61 of Richman's opening brief for the proposition that a receiver's prior earnings are relevant in determining his fees, we have no quarrel with this proposition either. We do desire, however, again to call attention to the fact that for three or four years prior to January, 1947, the Receiver received a net salary, before taxes, of \$40,000.00 a year [R. 891-892, 367-368], and that from October, 1948, to April, 1951, he received a salary of \$20,000.00 per year from another employer. [R. 879-881.]

II.

The District Court Did Not Err in Ordering the Receiver to Reimburse Himself From the Monies in His Possession to the Extent of \$89.20, Paid Out of Him for Copies of His Deposition and That of His Attorney.

The depositions of the Receiver and his attorney were taken by Richman for use upon the hearing on the Receiver's report and petition for fees and his counsel's petition for fees. [R. 238.] They were introduced in evidence at that hearing. [R. 250, 544.] Under Rule 54(d), Federal Rules of Civil Procedure, except when express provision is made therefor in a statute of the

United States or in the Federal Rules of Civil Procedure, "costs shall be allowed as of course to the prevailing party unless the court otherwise directs, . . ." The Receiver and his attorney were prevailing parties and Richman was a losing party in that the District Court found the Receiver's report "to be full and correct" [R. 193] and awarding fees to the Receiver and his counsel. It is well settled that the cost to the prevailing party of obtaining a copy of his deposition taken by the losing party is taxable against the losing party. (*Schmitt v. Continental-Diamond Fibre Co.* (N. D., Ill., 1940), 1 F. R. D. 109.)

III.

The District Court Did Not Err in Refusing to Disqualify Itself to Settle the Receiver's Account and to Award Fees to the Receiver and His Attorney.

The argument on this point has already been sufficiently developed under subdivision B of our statement of the case appearing at pages 11 to 12 hereof.

It is respectfully urged that the order appealed from should be affirmed.

Respectfully submitted,

JOHN WHYTE,

*Attorney for Appellee Roy E. Hallberg, as
Receiver.*

JOHN WHYTE,

In Propria Persona.

FITZPATRICK & WHYTE,
Of Counsel.



No. 14702

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

FREDERICK I. RICHMAN,

Appellant and Cross-Appellee,

vs.

LYDA TIDWELL,

Appellee and Cross-Appellant,

ROY E. HALLBERG, as Receiver, and FITZPATRICK &
WHYTE and JOHN WHYTE, attorneys for the Receiver,
Appellees.

Consolidated Brief of Lyda Tidwell as Cross-Appellant
and as Appellee, in Answer to Opening Brief of
Appellant Frederick I. Richman.

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SEP 15 1955

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WHYTE and JOHN WHYTE, attorneys for the Receiver,

Appellees.

**Consolidated Brief of Lyda Tidwell as Cross-Appellant
and as Appellee, in Answer to Opening Brief of
Appellant Frederick I. Richman.**

Preliminary Comment.

It should be noted that since Lyda Tidwell, plaintiff in the court below, appealed only from a relatively small portion of the court's order [see Notice of Appeal, R. 197, and Lyda Tidwell's Statement of Points, R. 972], it was felt that it would be practical for Lyda Tidwell, as cross-appellant and respondent, to file only one brief, which would constitute both a cross-appellant's opening brief and a respondent's reply brief.

An order permitting this consolidation was obtained from the United States Court of Appeals for the Ninth Circuit, based upon the Stipulation of the parties.

Therefore, Lyda Tidwell's Brief is divided into two portions, the first portion constituting her opening brief as Cross-Appellant, and the second portion, her reply as respondent.

In view of the fact that there are two separate appeals filed, cross-appellant and respondent, Lyda Tidwell, will, for convenience, be generally referred to by her name solely, and appellant and cross-respondent, Frederick I. Richman, will be, for convenience, referred to by his name solely.

OPENING BRIEF OF CROSS-APPELLANT, LYDA TIDWELL.

Pleadings and Jurisdiction.

This case originally arose out of an action brought by Lyda Tidwell, as plaintiff, against her brother, Frederick I. Richman, and others, as defendants, in the United States District Court for the Southern District of California. Plaintiff, Lyda Tidwell, brought suit seeking the dissolution and avoidance of a Declaration of an *inter vivos* Trust, and for a distribution of the assets of the estate to the trustors, consisting of herself and her brother, Frederick I. Richman. Each was the beneficial owner of one-half the assets of said trust. She claimed that the trust was voidable because of undue influence and fraud in the inception of the trust and sought damages for fraudulent and improper management, and further asked for the removal of Frederick I. Richman as agent of the trust. Defendant, Frederick I. Richman, answered, denying the allegations of undue influence and fraud in the inception of the trust and further denied the allegations of fraudulent and improper management. [See Memorandum of Decision, R. 3-20.]

Jurisdiction is based on the fact that plaintiff, Lyda Tidwell, is a resident of the State of New Mexico, while defendant, Frederick I. Richman, and the remaining defendants are residents of the State of California, and the amount involved in the controversy exceeded \$3,000.00 exclusive of costs and interest.

Jurisdiction is conferred under the provisions of Section 1291 of the Judicial Code as amended (28 U. S. C. 1291).

Statement of the Case.

The trial court determined that the issues of fraud and undue influence in the inception of the trust would be tried first and separately from the other remaining issues under the provisions of section 42(b) of the Rules of Civil Procedure for the District Courts of the United States. [R. 3-4.] After an extended and bitterly contested trial, which lasted in excess of nineteen (19) days [R. 5], the trial court filed its Memorandum of Decision on November 30, 1953 [R. 3-20], in favor of Lyda Tidwell voiding and cancelling the trust and all other questions and matters were expressly reserved for further proceedings. [R. 17.]

On the same day, November 30, 1953, the trial court signed and filed its order appointing Roy E. Hallberg as Receiver, "In the best interests of all the parties and for the protection and preservation of the assets of the former Richman Trust" [R. 21-24], said receiver being expressly ordered to take possession forthwith of the said assets and manage and operate the same, and that the said receiver should not pay any income to either plaintiff or defendant Richman without specific order of court. The principal assets consisted of the five apartment houses mentioned in the court's order. [R. 22.]

Judgment was entered January 22, 1954, in favor of Lyda Tidwell voiding the trust, and in conformance with the memorandum decision of November 30, 1953, and on the express finding that no just reason for delay existed in the entering of judgment. [R. 21-24.]

The receiver operated the former trust properties for a period of three months, from December 1, 1953, to February 28, 1954, at which time plaintiff, Lyda Tidwell, and defendant Richman reached a final settlement disposing of all issues. Said settlement arose by virtue of a letter dated February 19, 1954, in which defendant offered to sell his undivided one-half interest in the former trust assets to plaintiff for the sum of \$600,000.00; that plaintiff, Tidwell, as the buyer, would assume possession of the said assets on February 28, 1954, and after payment of or provisions being made for the payment of the receiver's operating obligations and expenses and fees, the balance remaining under the control of court would be divided equally between the parties. [R. 139-142.] Plaintiff Tidwell unconditionally accepted said offer by letter dated February 25, 1954, and assumed possession of the assets on February 28, 1954. [R. 143-144.]

The Receiver filed his First and Final Report and Petition for Allowance of Fee to Receiver, on March 18, 1954 [R. 75-121], and on the same day, Fitzpatrick & Whyte, and John Whyte, attorneys for the receiver, filed their Petition for Allowance of Fees to Attorneys for Receiver. [R. 58-74.] Said receiver's First and Final Account reflected that he had on hand, after the payment of all obligations except his fees and those of his attorneys, the sum of \$20,697.71. [R. 119.] On April 6, 1954, defendant Frederick I. Richman, filed his Objections and Answer to report and petition of receiver and his attorney for fees [R. 125-144], in which certain objections were made, first, to the account of the receiver, and, second, to surcharge the receiver for delivering certain assets to plaintiff Tidwell, in which assets Richman claimed to own a one-half undivided interest. On April 7, 1954, Lyda Tidwell filed her objections, stating that she, in fact, did

not object to the accuracy of the receiver's report, but merely pointed out that the trial court would be involved in a division of funds between Lyda Tidwell and Frederick I. Richman, in accordance with the letter agreement of the parties. [R. 145-152.] Lyda Tidwell then filed, on April 12, 1954, her Reply to Objections of Defendant, Frederick I. Richman [R. 152-156], together with points and authorities in support thereof. [R. 152-156.]

The said petition of the Receiver and his attorneys, and the objections of Tidwell and Richman are the pleadings pertaining to the present conflict between the receiver and his attorney on the one hand, and Frederick I. Richman, on the other, and also to the conflict between Lyda Tidwell and Frederick I. Richman as to the division of the fund remaining after payment therefrom of the fees for the receiver and his attorneys. Lyda Tidwell has never objected to the accuracy of the receiver's report nor to the award of reasonable fees to the receiver and his attorney, nor has she asked that the receiver be surcharged, since the receiver did no wrong, and the balance remaining in his hands is sufficient to settle in full all remaining disputes between Tidwell and Richman as to credits and debits, which each claims against the other in the final settlement of their dispute and division of the funds.

The trial court held its hearing, first, on the Receiver's Account and Report and the issues of an award of reasonable fees for the receiver and his attorneys. On June 21, 1954, stipulations were entered into between Lyda Tidwell and Frederick I. Richman, which made a trial of fact unnecessary as to the proper division of funds between them. [R. 783-817.] On October 5, 1954, a memorandum to counsel by the trial court disposed of all remaining issues and counsel for plaintiff was requested to pre-

pare an order under Local Rule 7 of the United States District Court for the Southern District of California, which rule permits the parties to submit computations based on the court's decision prior to the court signing a final order. Defendant Richman made no objection to the tentative order proposed by Lyda Tidwell, but seeks relief, by direct appeal, from the whole of said order finally signed and entered November 19, 1954. [R. 196.]

The defendant, Frederick I. Richman, having appealed from the whole of said order, plaintiff, Lyda Tidwell, appealed from that portion of the order relating to her dispute with the defendant, and which portion of the Order is unfavorable to her insofar as final division of funds under the court's control is concerned. [R. 197.]

Defendant Richman appealed on December 15, 1954 [R. 196], and plaintiff, Lyda Tidwell, appealed on December 20, 1954.

Generally, defendant Richman claims that (1) the trial court should have disqualified itself from considering any of the issues presented here; (2) that, in any event, the trial court had no jurisdiction to settle title as between plaintiff and defendant to the funds under the court's control; (3) that the receiver and his attorney were awarded excessive fees by the court; and (4) that, in dividing the fund between plaintiff and defendant: (a) the trial court should have given Richman a credit for services rendered the trust in November, 1953, at the rate of 10% of the gross receipts for that month, rather than at a *quantum meruit* rate of 6% allowed by the court; (b) that although the trial court allowed a credit in favor of Mr. Richman, for a trust deed payment made in February, 1954, by the receiver, which applied to the month of March, 1954, and was, therefore, the sole obligation of

Mrs. Tidwell, still the trial court erred in its computation; (c) that the trial court erred in failing to credit Richman with one-half of the rents collected from the trust department houses for the 26th, 27th and 28th days of February, 1954, which funds were turned over to Mrs. Tidwell by the receiver; (d) that the trial court erred in failing to credit Mr. Richman with one-half of the amount of petty cash fund which the receiver turned over to Mrs. Tidwell; that, although the receiver had not paid certain obligations incurred during his stewardship, which were later paid for by Mrs. Tidwell out of her own funds, nevertheless the court erred in allowing Mrs. Tidwell a credit for one-half of these obligations consisting of (e) the installation of catalytic units, (f) real property taxes for January and February, 1954, and (g) utility bills for February, 1954.

Plaintiff Tidwell on the other hand objected to (1) any award of agent's fees to Richman for the month of November, 1953, and (2) further claimed that in the final settlement between Richman and Tidwell, the court should have allowed her a credit for Richman's escrow fees and Bureau of Internal Revenue stamps required to be placed on Richman's deed of conveyance to her of his one-half undivided interest in the real properties of the former trust, since Mrs. Tidwell paid for those two items out of her own funds.

Specifications of Error.

Lyda Tidwell, as Cross-appellant, urges and relies upon three specifications of error, as follows:

(1) SPECIFICATION OF ERROR NO. 1.

The trial court erred in awarding Richman a management fee as agent for the dissolved trust for the month of

November, 1953, in the sum of \$1,862.60 (one-half of which was charged to Lyda Tidwell) or in any sum whatsoever.

(a) The court found that Richman was entitled to a reasonable fee for services rendered by him as agent of the dissolved trust for the month of November, 1953, which reasonable fee was found to be 6% of gross revenues or the sum of \$1,862.60, one-half of which was held to be the obligation of plaintiff, Lyda Tidwell. [R. 194-195.]

(2) SPECIFICATION OF ERROR No. 2.

The trial court erred in failing to credit Lyda Tidwell from Richman's share of the balance of the funds for Richman's escrow fees on the sale of his one-half undivided interest of the trust assets. Lyda Tidwell paid the seller's escrow fees in the sum of \$329.00. [R. 787-788; 799A.] The trial court found that Lyda Tidwell was not entitled to any credits for expenses incurred by her in said escrow on behalf of Richman. [R. 195-196.]

(3) SPECIFICATION OF ERROR No. 3.

The trial court erred in failing to credit Lyda Tidwell from Richman's share of the balance of the funds for Richman's costs for Bureau of Internal Revenue Stamps placed on his deed of conveyance of his one-half undivided interest in the former trust properties. Lyda Tidwell paid the sum of \$577.50 for the said Internal Revenue stamps out of her own funds. [R. 799A.] The trial court found that Lyda Tidwell was not entitled to any credits for payments made by her on Richman's behalf in said escrow. [R. 195-196.]

I.

Specification of Error No. 1.

Richman Not Entitled to Credit for Any Services Rendered
the Trust.

Lyda Tidwell assigns error to the trial court's granting a credit to Frederick I. Richman in the sum of \$1,862.60 out of the balance of the fund for services rendered to the trust as agent therefor for the month of November, 1953.

In his brief at page 67. Richman even claims that he is entitled to his full agent's fee of ten per cent (10%) for the operation of the trust in November, 1953. The court did, in fact, give him credit for one-half of a reasonable fee, which the trial court set at six per cent (6%). [R. 194-195.]

Mrs. Tidwell strongly urges that Mr. Richman was not entitled to any credit for fees.

Before arguing the respective alleged specifications of error, a brief review of the pertinent evidence may help clarify these issues:

The parties had reached a binding agreement by the unqualified acceptance letter of Tidwell and her attorneys dated February 25, 1954. [R. 143.]

The pertinent provisions of the offer letter dated February 19, 1954, written by Richman's attorneys and approved by him in writing at the bottom thereof [R. 139-142] are as follows:

- (1) Mutual releases by each party to the other from the beginning of time to the present.
- (2) Both parties to "bear their own expenses."
- (3) Mutual dismissals with prejudice to be entered in the law suit.

(4) "A stipulation shall be entered into that the receiver be relieved as of five o'clock p. m. February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 on . . ."

(5) "The receiver shall file his report and after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman."

(6) "Mrs. Tidwell shall have her election to either buy Mr. Richman's undivided half interest in the assets of Richman Trust, or to sell her undivided one-half interest in the assets of Richman Trust for the sum of \$600,000.00, payable on the following basis:

"(a) \$100,000.00 cash shall be paid on February 26, 1954 . . . to the other . . ."

"(b) \$500,000.00 shall be paid through escrow . . . on or before May 1, 1954."

(7) "All parties will execute whatever is necessary to carry out the terms of this arrangement."

Lyda Tidwell, having accepted the offer of Richman to sell his "undivided half interest in the assets of the Richman Trust," Lyda Tidwell paid Richman the \$100,000.00 directly and the parties went in to escrow and entered into an escrow agreement for the purpose of executing the contract of purchase. [Escrow Instructions, R. 799-800.]

It must be recalled that the court stated Richman "had adroitly, and by over-weaning and deceptive means, obtained a contract for a lifetime." [Memorandum Decision, R. 188.] As agent of the trust, Richman received a fee of 10% of the gross receipts (exclusive of capital gains). [R. 729-730.] This was a nice "fat" fee when

we realize that the 10% fee Richman seeks for the month of November, 1953, amounts to \$3,104.33, and when we further realize that it was not by any means a full-time job, as shown by the receiver's testimony and by Richman's testimony as to his law practice and many other interests. [R. 528, 713-715, 731-732.] The court awarded the receiver a fee of 6% of the gross income for the period of the receivership [R. 183], and Richman has charged that the same is excessive and an abuse of discretion, although apparently the receiver did his job as well or better than Richman. The court states that ten (10) percent is an excessive fee [R. 187] and that a 5% fee "would have been indicated." [R. 183.] The court then awards Richman a fee amounting to 6% of gross revenues, or the sum of \$1,862.60, of which Mrs. Tidwell must pay one-half. [R. 194-195.]

The trial court correctly pointed out in its memorandum decision that the trust had been voided and therefore Richman was not entitled to the amount provided for in said Trust Agreement. [R. 183.] The judgment did, of course, void and set aside and cancel the trust [R. 41-44], and the court was perfectly correct in holding that it was not bound by the terms of the Trust in setting a fee for Mr. Richman. Satisfaction of judgment was entered in said case [R. 800], and the judgment voiding the trust therefore became final.

However, Mrs. Tidwell objects to the award of any fees to Mr. Richman for the month of November, 1953. It must be noted that the Trust began November 1, 1945, and that Richman, as agent, had received approximately twice the amount of fees to which he was reasonably entitled for a period of almost exactly eight years. [R. 187.] Mrs. Tidwell had been mulcted of thousands of

dollars in fees. These issues (other than fraud and undue influence in the execution of the trust) had not been tried when the court gave its judgment voiding the Trust. [R. 3-4.] The judgment specifically reserved to Mrs. Tidwell the right to claim "such additional assets, if any, as plaintiff (Mrs. Tidwell) may be adjudged entitled to after an accounting; . . ." and the court reserved jurisdiction to make final disposition of "other issues still pending. . . ." [R. 43-44.]

Mrs. Tidwell had a legitimate claim for the surcharging of Mr. Richman with respect to excessive fees charged her in the past. But when the settlement was made, each party, as a term of the letter agreement, released the other from any and all claims from the beginning of time to the present. Also, the letter offer of February 19, 1954, states: "2. Both parties shall bear their own expenses." [R. 140.]

At the time the parties entered into the letter agreement, the trust was voided. Richman's claim for reasonable fees for services rendered could, of course, only be made against Mrs. Tidwell and himself, because his services, as agent, were only of benefit to them as the owners of the trust properties. The judgment, therefore, left Richman in the position of a claimant against Mrs. Tidwell for the reasonable value of his services. But, Mrs. Tidwell had many claims against Mr. Richman. Both parties gave up these claims.

Mr. Richman's offer, must be most strictly construed against him in the event of ambiguity, since he and his attorney are the author thereof, and said offer makes no mention of his receiving this fee. The letter offer of February 19th mentions paying "the receiver's claims and expenses and operating obligations" [R. 141], but doesn't

mention paying any of Richman's claims. It would be adding insult to injury to award Richman one cent more in fees in this case. It certainly was not the intent of the parties that he be so enriched. Mr. Richman testified several times that the net worth of the trust was \$1,200-000. If that be true, then plaintiff, in paying \$600,000 for Mr. Richman's interest, was in no way compensated for the loss she sustained over a period of eight years in the payment of exorbitant fees. Looking at the letter agreement as a whole, it is obvious that each party must bear any expenses sustained in connection with the trust. Any services which Richman performed and was not compensated for, was his "own expense."

The letter offer of February 19, 1954, was prepared and signed by both Mr. Richman and his attorney and must be most strictly construed against him.

Williston On Contracts, Revised Edition, Volume 1, Section 37, Page 100, states as follows:

"* * * (a) Ambiguous words in an obligation should be interpreted most strongly against the party who used them."

And again in Volume 3 of *Williston*, *supra*, Section 620, Page 1788:

"Since one who speaks or writes, can by exactness of expression more exactly prevent mistakes in meaning, than one with whom he is dealing, doubts arising from ambiguity of language are resolved in favor of the latter;"

See *Restatement of Contracts*, Section 236(d). Also in accord, *Preston v. Herminghaus*, 211 Cal. 1; *Couture v. Ocean Park Bk.*, 205 Cal. 338.

II.

Specification of Errors 2 and 3.

Lyda Tidwell Entitled to Credit for Escrow Fees and Revenue Stamps Paid by Her on Behalf of Richman.

Lyda Tidwell assigns error to the trial court's failure to grant her credit out of the balance of the fund for escrow fees in the sum of \$329.00 and revenue stamps in the amount of \$577.50 paid by her on behalf of Richman in the escrow held at the California Bank for the purpose of executing the letter agreement.

In order to distribute the money which the court had under its control, it became necessary for it to interpret the letter agreement of the parties, the escrow instructions, and other evidence submitted to it.

When the parties appeared at escrow, Richman insisted that the escrow instructions provide that the buyer (Mrs. Tidwell) pay the seller's as well as the buyer's escrow fees and that the buyer pay for the Internal Revenue Stamps to be placed on the deed of conveyance. The escrow company is hardly the place to argue such points. Thus, the escrow instructions provide for payment of those two items by the buyer [799A]. However, immediately after such provisions appears the following:

“These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me and with which agreement California Bank is not to be concerned.” [R. 799A.]

In spite of the last quoted portion of the escrow instructions, Richman argues that the escrow instructions control over the letter agreement. He further states that the letter

agreement means that the person selling is to "net" the sum of \$600,000, and therefore, the buyer is to pay all expenses incident to the sale. Agreements for the sale of property always provide that a purchaser shall pay a certain sum of money as and for the purchase price and deposit a portion thereof in escrow or pay the same outside of escrow directly to the seller for the purpose of binding the agreement. Yet the seller always expects to pay his share of the escrow expenses and all the seller's costs of sale.

And, further, the letter agreement specifically states that:

"Both parties shall bear their own expenses."
[R. 140.]

Furthermore, although the subjects of payment of escrow fees and revenue stamps were not specifically mentioned in the letter agreement, still the usual practice and custom with respect to the same were an integral part of the letter agreement. It was said in *King v. Stanley*, 32 Cal. 2d 584, 197 P. 2d 321, that:

"Equity does not require that all the terms and conditions of the proposed agreement be set forth in the contract. The usual and reasonable conditions of such a contract are, in the contemplation of the parties, a part of their agreement. In the absence of express conditions, custom determines incidental matters relating to the opening of an escrow, *furnishing deeds*, title insurance policies, prorating of taxes, and the like. (*Janssen v. Davis*, 219 Cal. 783, 788

(29 P. 2d 196); *Wagner v. Eustathiev*, 169 Cal. 663, 666 (147 P. 561); *Bisno v. Herzbery*, 75 C. A. (2d) 235, 241 (170 P. 2d 973); *O'Donnell v. Luther*, 68 Cal. App. 2d 376, 383 (156 P. 2d 958).)" (*Italics ours.*) (Pp. 588-589.)

Therefore, the letter agreement actually provided that the seller (Richman) would pay his share of the escrow fees and the revenue stamps on the deed of conveyance which are the seller's usual expenses.

In the case of *King v. Stanley, supra*, the seller argued that the escrow instructions pertaining to her furnishing a policy of title insurance added a provision not contained in the original agreement. But the court held that it was implied in the original agreement (by custom) that she should furnish a policy of title insurance.

Clearly, there can be no doubt as to the meaning of the offer of February 19, 1954, with respect to the responsibility for the seller's escrow fees and internal revenue stamps. There is no ambiguity involved here as to this issue. Richman apparently argues that the escrow instructions superseded the original contract of purchase, and that the seller's escrow fees and internal revenue stamps should not be paid by him because the escrow instructions specifically state that the buyer shall pay the same. [R. 800.]

The importance of the escrow was to make possible the execution of the contract of purchase. Lyda Tidwell had no desire to indulge in protracted argument over the

wording of escrow instructions. Both parties were protected by the typewritten insertion of the following words:

"These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me (Lyda Tidwell) and with which agreement California Bank is not to be concerned." [R. 799A.]

In other words, in this particular case, the parties agreed, that the contract of purchase as arrived at by the interchange of the letters of February 19, 1954 and February 25, 1954, was not to be in any manner affected by the signing of escrow instructions.

It very often happens that parties may enter into an involved agreement of purchase and sale and then go into escrow and file escrow instructions. If the escrow instructions are inconsistent with the prior written agreement, the question arises as to which is to control. This is a question of interpretation and the prior agreement and the escrow instructions must be read together. If the escrow instructions specifically state that the prior agreement is the controlling one, then, of course, the prior agreement controls and not the escrow instructions. In *King v. Stanley, supra*, the court stated that escrow instructions which are merely customary and expected directions to the escrow company do not take the place of the prior written agreement but merely carry it into effect.

In *Pigg v. Kelley*, 92 Cal. App. 329, 268 Pac. 463, it was held that where a written agreement of sale and escrow instructions connected therewith show by their

terms that they refer to the same sale, the two instruments must be construed together, under Civil Code 1642, to ascertain the whole contract between the parties.

In *Womble v. Wilbur*, 3 Cal. App. 527, 86 Pac. 921, it was held that where parties entered into a written agreement and in pursuance thereof entered into an escrow whereby certain instructions were given to the escrow company, in case of any inconsistency, it is a question of interpretation of contracts and the surrounding circumstances as to whether the former agreement or the escrow instructions controlled. The court points out that the parties can agree that the previous written agreement is not to be superseded by any escrow instructions.

For the reasons hereinabove stated, it is respectfully submitted that the trial court erred in granting an agent's fee to Richman for the month of November, 1953, and in failing to surcharge Richman's share of the fund for his escrow fees in the sum of \$329.00 and in the further sum of \$577.50 for Internal Revenue Stamps, the latter two items having been paid by Mrs. Tidwell.

REPLY BRIEF OF APPELLEE LYDA TIDWELL.

Considerable time was expended in the trial of the Receiver's accounting and the issues pertaining to his fees and those of his attorney. Although counsel for Tidwell were in attendance at the trial, they made it clear to the court that they did not question these issues and all that remained to be done, insofar as the Receiver was concerned, was to award him a reasonable fee [R. 243] and the record shows that counsel for Lyda Tidwell did not participate in these issues.

Nowhere does the record show that the receiver failed to account properly for the funds received by him in the administration of the trust, nor does the record show that the receivership lost any money or that it failed to manage the apartment houses correctly.

The trial court permitted the receiver to reimburse himself for the sum of \$89.20 for copies of depositions paid by him. [Order of Court, R. 195.] These were copies of the deposition of the receiver [R. 871-921] and his attorney. [R. 922-968.] Both of these depositions were taken by Joseph Enright and were used and introduced into evidence in the hearing between the receiver and Richman. Since the Order of the Court ordered the receiver to reimburse himself from the funds remaining in his hands, Lyda Tidwell paid one-half of those expenses. Tidwell believes that the receiver is entitled to be reimbursed for those expenses, but only out of Richman's share of the funds in the receiver's hands.

Likewise, with reference to costs on appeal, it is respectfully submitted that Lyda Tidwell should not be charged with any costs on appeal pertaining to the issues of the Receiver's account, his fees and the fees of his attorney.

I.

Court Had Jurisdiction to Determine Respective Rights of Lyda Tidwell and Frederick I. Richman to Balance of Funds in Receiver's Hands.

Under "Specification of Error 1" Richman argues in his opening brief that the trial court had no jurisdiction to settle the dispute between Richman and Tidwell as to the balance of the funds remaining in the Receiver's hands (Richman's Op. Br. pp. 49-54); however, he cites no authority for the proposition.

The trial court explains in its Order *In Re Settlement of the Receiver's accounts* that it retained jurisdiction, after the dismissal of Tidwell's suit against Richman, for the purposes of settling the accounts of the receiver, fixing the fees of the receiver and his attorney and disposing of any balance of the funds remaining. [R. 192.]

The trial court's procedure was undoubtedly correct.

In *Pacific Bank v. Madera Fruit, etc. Co.*, 124 Cal. 525, 57 Pac. 462, plaintiff dismissed suit after a receiver had been appointed and after the receiver had taken possession of certain assets. Thereafter, the receiver filed his account and petition and asked the court to "settle the same, fix his compensation, et cetera." Plaintiff then filed a motion to dismiss the account and petition on the ground that the court had lost jurisdiction. However, the motion was overruled and this ruling was affirmed on appeal. The decision of the court notes that not only does the court retain jurisdiction to settle the receiver's account, but it also retains jurisdiction to dispose of the funds in the receiver's possession, saying, the receiver,

"'. . . is still amenable to the court as its officer until he has complied with its directions as to the disposal of the funds which he has received during the course of his receivership.'"

The *Pacific Bank* case also states, at page 527:

“* * * If the court below lost jurisdiction of the case by virtue of the dismissal so that it could not settle the accounts of the receiver, *nor make any disposition of the funds in his hands, how would the account be settled or the funds disposed of?* The money on hand and collected by the receiver is in contemplation of law in the hands of the court to be disposed of as the law directs.” (Emphasis ours.)

And,

“If the court in which the receiver was appointed cannot, after the dismissal of the case, settle and adjust the accounts of the receiver, to what jurisdiction will he resort? The dismissal of the case was the end of it as between the parties, but *we think the court still retained the power to settle the accounts of its receiver and to direct the application of the funds in his hands.*” (P. 527.) (Emphasis ours.)

It is clear that the receiver is holding funds for disposal at the direction of the court. In *Garniss v. Superior Court*, 88 Cal. 413, 417, 26 Pac. 351, 417, the court stated, quoting from Beach on Receivers, Section 249:

“‘Though a receiver may be, and generally is, appointed upon the application of one of the parties interested in the property which he is to preserve, his holding is not merely for the benefit of such party, or of any other party; *it is the holding of the court for the equal benefit of all persons who may be finally adjudged by the court to have rights in it.*’” (Emphasis ours.)

In *State v. Gibson*, 21 Ark. 140, the court, referring to jurisdiction over a receiver after dismissal of the case, said,

“He was an officer of the court and subject to its orders in relation to the partnership effects placed

in his hands as receiver until discharged by the court.”

To the same effect, see *Ireland v. Nichols*, 40 How. Pr. 85; *Whiteside v. Pendergast*, 2 Barb. Ch. 471.

II.

Reply to Richman's Specifications of Error 2, 3 and 4.

Under Richman's "Specifications of Error 2, 3, and 4" [R. 54-59] a number of points are apparently made, and will be discussed in the order raised by him.

A. Charging Receiver's Fund With Real Property Taxes for the Months of January and February, 1954.

The trial court found that the receiver, having turned over his records to Lyda Tidwell on February 28, 1954, did not pay certain obligations during his administration, and one of these was the real property taxes for the months of January and February, 1954, in the sum of \$4,952.77 [R. 193] and the court held that Lyda Tidwell was entitled to a credit of one-half that amount, or \$2,476.38. [R. 195.]

Clearly the agreement of the parties was that the "operating obligations" of the receivership up to February 28, 1954, would be borne by the parties equally. The offer letter of February 19, 1954, stated that the person buying would "assume all operating obligations of the Richman Trust from March 1, 1954 on . . ." And again the offer further stated that "after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of the Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman."

The only question remaining is whether real property taxes constitute "operating obligations." There can be no question but that real property taxes are the very essence of "operating obligations" in a business devoted to the operation of apartment houses for profit. It has been specifically held that "operating obligations or expenses" include taxes.

Schmidt v. Louisville C & L Ry. Co., 84 S. W. 314, 315, 119 Ky. 287;

Michigan Public Utilities Com. v. Michigan State Telephone Co., 200 N. W. 749, 228 Mich. 658;

Fleischer v. Pelton Steel Co., 198 N. W. 444, 447, 183 Wis. 151.

Clearly, there can be no doubt as to the meaning of the offer of February 19, 1954, with respect to the responsibility for real property taxes up to February 28, 1954. Richman apparently argues that the escrow instructions superseded the original contract of purchase, and that the taxes should not be pro rated because the escrow instructions specifically state that taxes shall not be pro rated in escrow. [R. 800.]

But this overlooks the express provision in the escrow instructions to the effect that they shall not supersede, alter or amend the agreement between the parties.

The discussion hereinbefore had under paragraph II of the argument in the cross-appellant's portion of this brief discusses fully the effect of the escrow instructions and the same is incorporated herein at this point by reference.

Richman finally argues in connection with the taxes that there is no evidence to support the credit therefor in favor of Mrs. Tidwell. A pre-trial hearing was held on June 21, 1954. [R. 782-817.] Stipulations were

entered into with respect to all matters except as to the pro-ration of rents. Mr. Enright argued that if the court ruled as a matter of law there was to be no pro-ration of rents, then no factual issue would be left to try. [R. 809-812.] The trial court so understood also because the court states that the parties may file a stipulation on the February and March, 1954, rents. Then the court asks counsel,

“Is there any element about which we have to take oral evidence?”

And Mr. Enright, counsel for Mr. Richman, replies:

“None, in my opinion.” [R. 792.]

Mr. Robert Powsner, of Martin, Hahn & Camusi, represented Mrs. Tidwell at the pre-trial hearing. He requested a stipulation as to the issues urged on behalf of Mrs. Tidwell. Mr. Powsner stated, among other things:

“There are the real property taxes on the apartment houses, which Mrs. Tidwell paid out of her personal funds for the first six months of 1954. It is her contention that there should be a pro ration made, so that the first two months’ worth of those taxes should be reimbursed to her out of the receiver’s funds. That the first third would be \$4,952.77.” [R. 785.]

A few moments later Mr. Powsner stated:

“For instance, if Mr. Enright will stipulate Mrs. Tidwell paid for the taxes, we don’t have to introduce evidence she did so, and so on and so forth. And as to the utility bills, also.” [R. 786-787.]

“The court: What about that, Mr. Enright?”

Mr. Enright: So stipulated. He mentioned the taxes only.” [R. 787.]

Several minutes later, the record reveals that Mr. Enright stated:

“O. K. now, the amount of revenue stamps, I think, is the only remaining one.” [R. 790.]

B. Utility Bills for Month of February, 1954, Were Properly Held to Be an Operating Obligation for That Month.

The court found that Lyda Tidwell was entitled to a credit from the balance of the funds in the receiver's hands for one-half of the amount of the February utility bills which she paid for personally after assuming possession of the apartment houses on February 28, 1954, at 5 p. m. One-half of the amount paid by her for said bills was found to be the sum of \$938.75. [R. 195.]

It is difficult to understand why Mr. Richman should dispute this item. Certainly, utility bills for the apartment houses for the month of February, 1954, were “operating obligations” of the receivership. In the operation of apartment houses for profit, utilities are a necessary expense item and one of the most basic items of operation.

All the arguments above stated in favor of allowing a credit to Mrs. Tidwell for real property taxes apply equally as well to allowing her a credit for the utility bills.

If Mrs. Tidwell is denied this credit, then the offer letter of February 19, 1954, is meaningless. Also, in this instance. Richman may not use the escrow instructions to argue that the original letter agreement was in effect altered by the escrow instructions, since the latter specifically state that they are not intended to so alter or modify.

BASIS OF PROOF IN SUPPORT OF UTILITY BILLS.

Richman also argues that there was no evidence before the court to support the credit to Mrs. Tidwell for payment of the utility bills. Under the subject of real property taxes, above, there has already been quoted from the pre-trial hearing certain colloquies between court and counsel which demonstrate that the parties, as well as the trial court, assumed that the issues with respect to utility bills had been stipulated.

In addition, the following appears to have occurred at the June 21st pre-trial hearing:

“Mr. Powsner: And will you stipulate Mrs. Tidwell (578) paid out of her personal funds charges for utilities for the five apartment houses for portions of February in the amount of \$1,877.50.

Mr. Enright: The amount, I am sure, is less than that amount. And if we can stipulate on all of the remaining, for the record. I may be willing to stipulate on that one, also.

The Court: If you are not, it is the sort of matter that is susceptible of such easy proof that you can both probably check your figures.

Mr. Powsner: I think you have five packets of utility bills.

Mr. Enright: I will be willing to submit it on these five packets, if that is your proof.

Mr. Powsner: I haven't looked at the packets.

Mr. Enright: There they are (indicating). Mr. Camusi handed it to me.

Mr. Powsner: That is correct.

Mr. Enright: If that is your proof, I will stipulate they can go into evidence.

Mr. Powsner: I will stipulate they go into evidence. I don't want to stipulate that is the entire

case for the utility bills. I understand in those bills it is shown payment in excess of \$1,877.50, and the excess would represent March payment, but there are \$1,877.50 relating to February utility payments.

However, I find myself in the somewhat awkward position that I haven't examined personally many of the items of debt here. Since I haven't examined those utility bills, we are not willing to rely on those solely for our proof as to this matter.

But I am willing to stipulate they go into evidence for whatever weight they have, and if we feel it necessary that we be allowed to introduce other evidence on that subject.

Mr. Enright: I will stipulate they go into evidence, that is, the memorandum and the bills you have there.

Mr. Powsner: I am speaking of the utility bills.

Mr. Enright: The five utility bills for the five apartment houses.

Mr. Powsner: That is right.

The Court: Does that stipulation include the proposition that Mrs. Tidwell paid those bills out of her personal funds?

Mr. Enright: Yes."

Then, on the following page, appears Mr. Enright's statement: "O. K. now, the amount of revenue stamps, I think, is the only remaining one." [R. 790.]

Lyda Tidwell was handicapped at the pre-trial hearing by the fact that William P. Camusi, her counsel who had handled the litigation was unable to attend, and Mr. Robert Powsner, an attorney who had been practicing for one year was unfamiliar with the issues and evidence, and was required to represent Mrs. Tidwell at that hearing. [R. 775-776.] However, the fact remains that

although the stipulations may not have been in the best of form, there was no doubt as to their meaning.

Richman argues that the court did not take evidence and rendered its decision in a summary fashion. But, it has been held that if the trial court ended the trial and announced its decision in a somewhat summary manner, this matter cannot be reviewed on appeal if the party made no objection or failed to take exception thereto. (*Solomon v. Benjamin*, 75 F. 2d 564, Cert. Den. 295 U. S. 749, 79 L. Ed. 1694, 55 S. Ct. 831.)

Objections to the judgment or decree, which might have been met, if made below, are not open to review on appeal.

National Biscuit Co. v. Litsky, 22 F. 2d 939, 56 A. L. R. 853;

Asheville Const. Co. v. Southern Ry. Co., 19 F. 2d 32;

Neil Bros. Grain Co. v. Hartford Fire Ins. Co., 1 F. 2d 904.

It has been held that where judgment was excessive on the theory of recovery adopted by the trial court, it was defendant's duty to apply there for the correction of any mistake in calculation. (*Border National Bank of Eagle Pass, Tex. v. American Nat. Bank of San Francisco*, 282 Fed. 73, writ of error dismissed and certiorari denied, 260 U. S. 701, 732, 67 L. Ed. 471, 43 S. Ct. 96.)

And this rule applies to decrees in equity.

Mauro v. Rodriguez, 135 F. 2d 555.

C. Credit in Favor of Tidwell for One-half Amount of Catalytic Units.

The court found that Lyda Tidwell was entitled to one-half of the cost of the Catalytic Units paid by her, said one-half amounting to \$1,300.00. [R. 195.] The court indicated in its memorandum decision that the units

“were acquired by the Receiver during the period of his receivership but in doing so, he merely carried out a plan which had been put in motion by defendant. These units were assets of the trust which, under the terms of the letter agreement, were sold to plaintiff. The obligation to pay is the obligation of the Receiver, as the Receiver incurred the expenses during the administration of his Trust and plaintiff was not a party to the purchase.” [R. 185.]

The reasoning of the trial court is certainly sound in this respect. The letter offer does not specifically cover this item, it would be a fair interpretation that Richman and Tidwell each pay one-half the cost.

Richman had originally contracted for installation of so-called Oxyaire or Catalytic Units at the Oliver Cromwell and Canterbury Apartments. However, only the contract for the installation of the Catalytic Unit at the Canterbury Apartments was placed in evidence. [R. 801-803.] This contract was accepted by Mr. Richman as agent for the Trust on October 23, 1953, some 38 days before he was relieved of the management of the Trust by the receiver. The cost of these units became an obligation of the Trust at the time they were ordered by Richman, actually. Then the contracts were confirmed by the receiver and the receiver ordered the contractor to proceed with the work. [R. 646.]

The Catalytic Units were actually installed during the receiver's tenure of office. [R. 88.] The testimony taken during the hearing questioning the receiver's stewardship is replete with evidence covering the Catalytic Units. Richman attempted to prove, and did argue, that the receiver was negligent in the handling of the same. The receiver apparently retained the approved plans for the Catalytic Units on December 7 or 8 when they were sent to him by Mr. Richman [R. 648], and the receiver did not send them to the contractor for installation purposes until January 22, 1954. [R. 646.] Apparently, the contractor could have installed the equipment in December, 1953, but when he finally received the plans late in February, he was then short of certain strategic materials. [R. 703-704.]

Apparently, considerable delay was involved because warning was given by the Air Pollution District on January 13th concerning excessive discharge of smoke. [R. 708, 711.] A criminal complaint was then filed against Mr. Richman charging him with a violation of the Health and Safety Code of the State of California [R. 544] and requiring that he attend a hearing on February 1, 1955. [R. 637.]

Although the Air Pollution District had given approval for installation not later than December 10, 1954 [R. 387-388], the installation was not ordered until February 8, 1954. [R. 548.] There is also evidence that one Harrison, Richman's former bookkeeper, who had been retained by the receiver [R. 405-406], gave orders to the contractor not to install the equipment [R. 641] Richman claims that the receiver's attorney had erroneously advised the receiver that he was not bound by the contracts to install the Catalytic Units [R. 641], however, Mr.

Whyte, attorney for the receiver, testified that he advised the receiver that the contracts were valid and binding and should be carried out. [R. 556-557.]

Mr. Richman urges that the Catalytic Units for the two apartment houses were granted permits for their operation on March 9, 1954, and June 2, 1954, respectively [R. 805] and that the obligation to pay for them under the contracts did not arise until the said permits were granted, and that they were, therefore, obligations arising after February 28, 1954. However, only the contract with respect to the Canterbury Apartments was placed in evidence. [R. 801-803.]

The court found that the Catalytic Units were an obligation of the receiver. This was a finding of fact as well as a conclusion of law. There was more than sufficient evidence to support this finding and unless clearly erroneous, it is not subject to reversal on appeal.

United States v. United States Gypsum Co., 333 U. S. 364, 394-395, 68 S. Ct. 525, 92 L. Ed. 746.

D. Failure of Trial Court to Surcharge Tidwell for Rents of February 26, 27, and 28, 1954, Not Error.

The court found that Richman was not entitled to credit for any rents collected by Mrs. Tidwell. [R. 196.] This refers to the rents which were collected on February 26, 27, and 28, 1954, by the apartment house managers and turned over to Mrs. Tidwell at 5 p. m. on February 28, 1954.

It is important to note that the parties signed a stipulation on Friday, February 26, 1954 [R. 54-55] and that, by the terms thereof, the Receiver was to turn over all assets to Lyda Tidwell with the exception of "money in

bank and now under the control of the receiver," and, again, the stipulation states: "excepting funds in bank and under the control of said receiver."

These phrases were interpreted by the receiver and his attorney to mean that he was only to keep money in any bank account under his control. [R. 759.] Richman argues that the phrase in question means "money in bank *or* under the control of the receiver." However, the phrase appears twice in the stipulation and in both cases the phrase appears in the conjunctive and not the disjunctive. The phrase also appears twice in the order of court of February 26, 1954, and is identically written both times as "money in bank and under the control of the receiver." [R. 56.]

It should be noted that the receiver did not receive personal notice of the termination of his stewardship until Friday evening, February 26. [R. 418.] The receiver, of course, did not know what or how much rent money was paid by the tenants on February 26, 27 and 28, 1954. [R. 415.] The receiver testified that the Western Arms and the Canterbury Apartments house managers preferred to make collections on week ends and these were deposited the following week. [R. 758.] In this particular instance, these questioned rents could not be deposited until Monday, March 1, 1954. The finding that Mrs. Tidwell is entitled to keep these funds as her personal funds can be supported on several theories. The court in its Memorandum Decision points out that the letter agreement of the parties was to the effect that Mrs. Tidwell was to purchase Mr. Richman's "undivided half interest in the assets of the Richman Trust," and "If Mrs. Tidwell collected monies which were assets of the Richman Trust, then she has received no more than what she purchased."

[R. 184-185.] The court also states, "It appears that the various rents collected belong to plaintiff because they were rentals which were being paid in advance for occupancy during the term of her ownership of the properties."

These questioned rentals total \$1,290.59. [R. 782.] But counsel for Mrs. Tidwell argued that if Mr. Richman wished to claim one-half of those rents, then Mrs. Tidwell could claim that she should receive credit in the sum of \$4,499.29, which were rentals for the month of March, 1954, but which rentals were collected in February, 1954, by the receiver. [R. 790.] The receiver accounted for these rentals, and Mr. Richman has thus benefited, since they are a part of the balance remaining in the receiver's hands. Mr. Enright argued at the pre-trial hearing that if the court ruled as a matter of law that rents should not be pro rated, then it would be unnecessary to take evidence on the amount of March rents which Mrs. Tidwell claimed was collected by the receiver in February, 1954. The court said it would examine the evidence on that issue and that the matter could be argued by counsel at the following hearing to be set for oral argument [R. 810-812], and that the court's ruling might foreclose the taking of evidence on that issue. [R. 815.] The court, in effect, ruled that Mrs. Tidwell was not entitled to a credit for the March rents actually collected and deposited by the receiver in February. [Order *in re* Settlement, R. 190, 196.]

If this matter need be retried, Mrs. Tidwell would be entitled to a ruling as to whether she herself has a right to all the March rents collected in February by the receiver. If she has sole rights to such items, then a further accounting is necessary to introduce evidence on that issue.

E. Trial Court Did Not Err in Holding Mrs. Tidwell Entitled to Petty Cash Fund.

The court found that Mr. Richman was not entitled to any part of the petty cash fund of which Mrs. Tidwell assumed possession on February 28, 1954. The stipulation and order of the court, both of February 26, 1954, as discussed in subparagraph D above, clearly show the intent of the parties that Mrs. Tidwell was to assume possession of the petty cash fund. This petty cash fund was in existence when the receiver assumed his stewardship. The receiver's schedule of receipts and disbursements reflect a petty cash fund in the amount of \$785.00 as of November 30, 1953. [R. 104.] Clearly, the petty cash fund was an asset of the Richman Trust.

In its Memorandum Decision, the trial court reasoned that Mrs. Tidwell had "*purchased all of defendant Richman's interest in that Trust and that includes the petty cash fund which existed simply as an operating incident of each individual apartment house.*" [R. 185.] Mr. Richman states no good reason why Mrs. Tidwell is not entitled to the petty cash fund.

III.

Specification of Error 8—Accounting.

Under Specification of Error 8, on page 66 of Mr. Richman's Opening Brief, he apparently also makes certain other claims against Mrs. Tidwell as follows:

A. Compensation Insurance Refund.

Richman argues that he is entitled to a credit for \$158.00 compensation insurance refund which was due the Trust at the time the receiver surrendered possession of the assets to Mrs. Tidwell. But here again any such refund was an asset of the trust and the whole interest in the same passed to Mrs. Tidwell when he sold his one-half undivided interest to Mrs. Tidwell. Apparently, Mr. Richman wants to pro rate when it involves a credit item now in the possession of Mrs. Tidwell, but he does not want to pro rate any of the operating obligations which were incurred prior to March 1, 1954, in those cases where the receiver failed to pay for the same and Mrs. Tidwell was thereafter forced to pay those costs in full from her own separate funds.

All the arguments hereinabove advanced with respect to the petty cash fund also apply here.

B. Richman's Fee of 10% as Agent for November, 1953.

Mr. Richman claims he is entitled to his full ten per cent (10%) fee (based on gross receipts) for the month of November, 1953. Lyda Tidwell has already discussed the issue of this fee under paragraph I of her argument in the cross-appellant's portion of this brief. Reference is made

to said argument and the same is incorporated by reference herein at this point.

Suffice it to say here that *Richman had released Mrs. Tidwell of any and all claims* which he had against her. Further than that, his letter offer of February 19, 1954, provided that *each* was to bear his own expenses. It would be manifest injustice to permit him to collect a fee for services rendered after the parties had executed mutual releases in each other's favor.

C. Mistake in Mathematical Computation of Order In Re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver.

Mr. Richman points out at pages 58 and 59 of his Opening Brief that the mathematical computation of the court's order is incorrect with respect to the credit awarded him because of the receiver's payment of the March mortgage payment. It is true that the computation was incorrectly made to his disadvantage. *However*, he does *not* point out that the *same* mistake was made with respect to the credits to which Mrs. Tidwell is entitled. The result of these errors, which were committed by the writer in the preparation of the order, was to award Mrs. Tidwell \$1,340.49 *less* than the sum to which she was entitled. Conversely, Richman was awarded that same amount in excess of the sum to which he was justly entitled.

At this writing, counsel for Lyda Tidwell are in process of seeking a correction of the court's order under Rule 60(a) of the Federal Rules of Civil Procedure.

Conclusion.

It is respectfully submitted that for the reasons hereinabove stated, the order of the court settling the Account of the receiver, awarding fees, and distributing the balance of funds is substantially correct and should be affirmed with the exception that the mathematical errors committed therein should be corrected by leave of this court, and appellant Richman should be denied any credit whatsoever for management fees, and cross-appellant, Lyda Tidwell, should be allowed a credit for the escrow costs and charges properly chargeable to appellant Richman as the seller, but which were, in fact, paid by Mrs. Tidwell from her own personal funds.

Respectfully submitted,

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*Attorneys for Appellee and Cross-Appellant,
Lyda Tidwell.*

In the
United States Court of Appeals
For the Ninth Circuit

FREDERICK I. RICHMAN,

Appellant,

vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver
of all the real and personal property constituting
the former Richman Trust, and JOHN WHYTE,
attorney for Receiver,

Appellees.

LYDA TIDWELL,

Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as
Receiver of all the real and personal property con-
stituting the former Richman Trust, and JOHN
WHYTE, attorney for Receiver,

Appellees.

CONSOLIDATED BRIEF ANSWERING
APPELLANT TIDWELL'S BRIEF AND REPLY TO
RESPONDENTS' HALLBERG AND WHYTE BRIEF

BRADY, NOSSAMAN and WALKER
and

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FILED

OCT 10 1955

PAUL P. O'BRIEN, CLERK

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In the
United States Court of Appeals
For the Ninth Circuit

FREDERICK I. RICHMAN,

Appellant,

vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver
of all the real and personal property constituting
the former Richman Trust, and JOHN WHYTE,
attorney for Receiver,

Appellees.

LYDA TIDWELL,

Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as
Receiver of all the real and personal property con-
stituting the former Richman Trust, and JOHN
WHYTE, attorney for Receiver,

Appellees.

No. 14702

CONSOLIDATED BRIEF ANSWERING
APPELLANT TIDWELL'S BRIEF AND REPLY TO
RESPONDENTS' HALLBERG AND WHYTE BRIEF

Foreword

Brevity, and appellant Tidwell's conclusion (p. 38) that "the order of the court settling the account of the receiver, awarding fees and distributing the balance of the funds is substantially correct", although she "should be allowed a credit for the escrow costs and charges", justify designating her "respondent" or

“Tidwell”. Respondents Hallberg and Whyte will be referred to as “Receiver”. In replying to Tidwell appellant will again consider the appeal in the following order: I. Distribution of funds under the Settlement Agreement; and II. Fees. Thence, the respondents’, Hallberg and Whyte, who were required to be impartial fiduciaries, charges of untrue, argumentative statement of the case and argument, will be categorically answered.

I. Reply to Tidwell Brief.

A. The Settlement Contract and Acts of the Parties.

Logical presentation prohibits, (if it is necessary), answering Tidwell’s unjustified assertions such as: frequent assertions of fraud on the part of Richman; suffice it to say that the court in its Memorandum Decision (R. 5), made no mention of fraud on the part of Richman, but stated (R. 5):

“It now appears that plaintiff has made out her case on her theory of undue influence in the inception of the arrangement, and the only reason for setting forth the limitations immediately above described is to explain to any reviewing court that this case has been tried upon a limitation as described.”; or remarks such as

“a nice ‘fat’ fee when we realize that the 10% fee Richman seeks for the month of November, 1953, amounts to \$3104.33” (pp. 11-12), or: “Mrs. Tidwell has been mulcted of thousands of dollars in fees”, (p. 12), or the

“ . . . loss she sustained over a period of eight years in the payment of exorbitant fees” (p. 14), except to again observe that the premise to the Settlement Agreement was “ . . . , the court decision gave your client (Tidwell) what she was offered about two and one-half years ago before suit was filed, namely, a division of the trust” (R. 139), and that during appellant’s eight year management of the trust as agent its assets increased from \$375,000 to \$1,200,000. (R. 603-604). It is interesting to note that Tidwell makes no objection to the Receiver’s fees and expenses although it has been shown (Op. Br. 42) that the Receiver’s fees and expenses were greater than the fee of Richman who paid his own expenses. Also the expenses allowed the Receiver and his attorney are definitely contrary to the court’s own statement: (R. 188):

“It is noted that the total of receiver’s and attorney’s fees is approximately \$2500.00 less than the fee which would have been enjoyed by defendant while handling a like sum of money while he was in charge.”

Appellant’s Statement of Facts (Op. Br. pp. 4-14), was an effort to accurately refer this court to the record and to quote only portions of the agreement. The argument (pp. 54-59), has been challenged by Tidwell and the Receiver. The Receiver at pp. 18 and 19, as a part of its “Topical Statements” (the facts) volunteers their ex parte construction of the Settlement Agreement, to the end that the Receiver was not required to retain control of the managers’ cash funds, and that

the Receiver was not required to pick up from his managers rents in the sum of \$1290.59, collected before 5:00 p. m. on February 28, 1954.

An analysis of the following pages of Tidwell's brief reveals that it is primarily concerned with the construction of this Contract: pp. 10-15—Appellant's claim against Richman Trust for his November services, being an operating obligation of the trust; pp. 15-20—Tidwell's claims for escrow fees and revenue stamps; pp. 23-36—Tidwell's claims for real property taxes, utilities, and catalytic smog units payments and her right to retain rents and petty cash.

Constructive analysis and a reply to Tidwell's at least inaccurate quotation (p. 11) of the Settlement Agreement, justifies accurate quotation of at least paragraphs 4 and 5, after observing the following. The express conditions to the Settlement required the parties to execute various documents, perform various acts, and assume certain obligations; they were:

1. Mutual releases conditioned upon the entire settlement being carried out;
2. Bear their expenses. (expenses whether of litigation, the escrow or some other expense being undefined);
3. Dismiss the lawsuit with prejudice.
4. and 5. will be quoted.
6. Terminate the Trust.
7. Tidwell given the option to buy or sell a one-half interest for \$600,000; \$100,000, on or before February 26th, and the balance of \$500,000 through

escrow on or before May 1st. (Subject, of course, to paragraphs 4 and 5).

8. Tidwell required to elect on or before February 25th, and purchaser deliver the \$100,000 by February 26th. (Tidwell elected to buy).
9. Parties execute whatever is necessary to carry out the terms of this arrangement.
10. Each party take such steps as he or she deems necessary to protect his or her legal position prior to May 1, 1954.

Paragraphs 4 and 5 are as follows: (R. 140-141).

- “4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 on or until the re-appointment of a receiver as might occur under 7 (c) hereof. (Underscoring ours).
- “5. The receiver shall file his report and after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman.” (Underscoring ours). (R. 140).

Paragraph 4 specifies no hour at which the buyer would be entitled to “all receipts” from the 400 apartments, contrary to the purported quotation of the paragraph appearing top of page 11 of Tidwell's brief. In accordance with the paragraph a Stipulation was exe-

cuted (R. 54), which specified the time as being: "5:00 o'clock p.m. Sunday, February 28, 1954", being the end of the month, when Tidwell would be entitled to "all receipts from March 1, 1954". It is apparent that the Receiver was to collect the "receipts until 5:00 p.m.", paragraph 5, which requiring him to report and after payment and/or provision for all of the (1) Receiver's claims; and (2) Receiver's expenses; and (3) operating obligations of Richman Trust to February 28, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman. When one further considers the Stipulation the parties executed on February 26th (R. 54), the court Order pursuant to the Stipulation (R. 55), and the Escrow Instructions executed on the same date by the parties and their attorneys, it is more apparent. (R. 799). The Receiver argues (p. 18) that the petty cash funds in the hands of the managers, totaling \$785.00, was being purchased by Tidwell, and the trial court, he argues, so determined. Thence the Receiver argues that the rents collected by the managers before 5:00 p.m. were not capable of being retained or collected by him because "the banks were closed and he had no safe". Although safes were available in the apartment houses (R. 910). Further, he argues, "it appeared that these monies represented payments by tenants in advance," there being no evidence to support the assertion, (p. 19). Tidwell argues that the Stipulation of the parties terminating the Receiver's active duties "with the exception of money in bank and now under the control of the Receivers" or "excepting funds in bank and under the control

of the Receivers as of 5:00 o'clock Sunday, February 28, 1954", as the parties expressed themselves on the two different occasions in the Stipulations, that: "these phrases were interpreted by the Receiver and his attorney to mean that he was only to keep money in any bank account under his control." (p. 33). Such a construction ignores the escrow instructions which provided there be no proration of rents. It ignores the specific designation of 5:00 o'clock p. m., as being the time when the Receiver would cease to actively make collections and obtain "receipts". It renders the words: "and under the control of the said Receiver" of no effect, since naturally a Receiver controlled the receivership bank account. Further, it ignores one of the signers of the Stipulation own orally expressed interpretation of this Stipulation. This attorney, Mr. William P. Camusi stated, when arguing the question (R. 670), "It was conceded on all sides that all assets, except money in the bank or under the control of the Receiver at that time were to be turned over to the plaintiff, and they were turned over." The attorney's asserted concession is and has been the issue on these items.

B. Appellant's November Fees.

Tidwell affirmatively seeks (p. 10) to deprive Richman of the reasonable value of his services fixed by the trial court as being \$1862.60, arguing past mulcting of thousands of dollars and excessive fees, although admitting net worth of the trust (p. 14), as being \$1,200,000. Her error is that at the time of the settlement

motion for new trial was pending and the trial court stated it anticipated an appeal. She was not required to settle and neither party would thus have been required to execute the Mutual Release of each other or dismiss with prejudice, as they were required to under the terms of the Settlement. Tidwell's further error is her assertion that Richman's claim was against Tidwell for the value of his services or the agreed fee under the terms of the trust. His claim was against Richman Trust only. Three distinct items were provided for in paragraph 5 of the Settlement Agreement, which were conditions to the dismissals and releases. The three items were: (1) Receiver's claims; (2) Receiver's expenses; and (3) operating obligations of Richman Trust to February 28, 1954. The only remaining Trust or Receiver's obligations after the receiver had paid out \$6,121.40 (Accounting R. 119) in accordance with the Sunday afternoon phone call by the receiver and his attorney to the trial judge (R. 427-934-935), were the Richman's agent's fee for November, 1953 set up by the Receiver in the amount of \$3104.33 (R. 120) and the taxes. The escrow expressly provided no tax proration. The smog control catalytic units did not become an obligation until they were accepted by the Los Angeles smog authorities, which occurred March 9th and June 2nd, 1954. (R. 805). The receiver testified that he carried Richman's claim against the trust for his November services on the books as an obligation of the trust. Admittedly Richman operated the trust until the Receiver took over on November 30, 1953, even before he qualified as receiver on December 2nd, 1953.

His services for operating the trust were valuable to the extent that during his tenure its assets increased from a value of \$375,000 to \$1,200,000, and he should be paid in accordance with paragraph 5 of the settlement contract out of the funds in the hands of the receiver, because the Trust contract and the value of his services is an "operating obligation of Richman Trust" accruing before February 28, 1954. The dismissal with prejudice was dated March 3, 1954 (R. 125), and the Mutual Release bears no date (R. 796), but each was required by the Settlement agreement the same as the payment of this operating obligation of Richman Trust was required.

C. Tidwell Escrow Fee and Revenue Stamps.

Tidwell asserts as errors 2 and 3 (p. 15) that she is entitled to escrow fees and revenue stamps. The assertion is made notwithstanding she and her attorneys in carrying out the agreement signed the escrow instructions on the very day — February 26, 1954, in which she agreed (R. 799A):

"Notwithstanding the printed provisions in these instructions, I agree to pay, in addition to the buyer's costs and expenses in this escrow, all the seller's costs and expenses of this escrow and the cost of the policy of title insurance, revenue stamps and recording and filing all instruments and documents and the seller's escrow fee."

She correctly argued to the trial court in her points and authorities (R. 178), and upon oral argument (R.

821) that the Settlement Agreement and the escrow instructions must be construed together. She cited the authorities which were supplemented by appellant with additional authorities. All of her authorities she again cites to this court at pp. 16 and 17. Of course, she now argues these authorities hold, and they do, that: "in the absence of express conditions, custom determines incidental matters relating to the opening of an escrow." Here there is no proof of custom and no occasion to consider custom because the express conditions, to wit: no proration and no expenses, was specifically stated in the escrow instructions. The agreement expressly stated each party bear his own expenses, referring to their expenses of the litigation which was then being settled. If there was any ambiguity in the Settlement Agreement or Sale Agreement, the Agreement was not "superseded" or the escrow did not "control over" or "alter" or "amend", as Tidwell so frequently inserts these words in her brief; rather, the Sale Agreement was specifically clarified and not modified by the escrow instructions. Richman, as seller, executed and delivered the documents required of him and thus complied with the Agreement. The very next sentence in the escrow instructions, immediately following the last quoted terms relative to Tidwell paying the seller's costs and expenses, is the following: "These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me and with which agreement California Bank is not to be concerned." (R. 799A). The only other agreement between the parties

was the letter agreement heretofore mentioned, which letter agreement provided many things with which the escrow, as such, was not and could not be concerned; i.e.: 1) mutual releases of all claims; 2) bearing their own expenses; 3) mutual dismissals with prejudice; 4) stipulation relative to the termination of the receivership; 5) disposition of the funds in the hands of the receiver; and 6) termination of Richman Trust. The escrow concerned itself with the buying and selling and method of payment of the half interest of Richman Trust as set forth in paragraph 7 of the Agreement. Very obviously it was not the intent of the parties that the escrow should in any manner alter, amend, or change the requirements 1 to 6 contained in the Agreement.

D. Utility Bills.

Tidwell argues and the trial court so held that the receiver failed to pay these bills in the sum of \$1,877.50. Appellant's Opening Brief (pp. 4-14) remains uncontradicted that there has been no trial on the issues of utilities and tax proration in the amount of \$4,952.77. Tidwell attempts to avoid the trial court's failure to permit a trial, or as the trial court once said, a hearing before a Master (R. 842), by assertions on page 25 and again pages 27-28 based upon R. 790, 792, that the parties had stipulated upon these items. It will be noted that Tidwell's own quotation from the June 21st hearing reveals that at most counsel for appellant stated: "Mr. Enright: If that is your proof, I will stipulate they can go into evidence." (See p. 27) (R. 788).

Counsel had previously stated concerning the utility bills in the amount of \$1877.50: "the amount, I am sure, is less than that amount." The utility and tax bills were never identified or received in evidence and the trial court stated (R. 809), concerning utilities, taxes and catalytic units: "Well, it seems that you will have some fact issues as to which evidence will be necessary unless you get together on stipulations, which don't look too hopeful." The record here is that Tidwell never had these bills marked for identification or have they ever been received in evidence. Later the June 21st record shows (R. 817) that: "Mr. Powsner: I think we ought to have these while we discuss the matter", referring to the utility bills. The hearing was then adjourned.

The next proceeding occurred on September 27, 1954, (R. 817-843). Again the parties argued the construction of the Sale Agreement and escrow instructions. Again Tidwell (R. 836) stated she desired to offer some utility bills in evidence. Objection again was made and it was pointed out (R. 837) appellant would desire to present evidence if the utility bills were received in evidence and the court sustained the objection. Then the court stated (R. 837) in reply to Tidwell's further argument: "The Court: If on the main contention I should ultimately decide you were right we will refer the whole question to a Master for the taking of evidence. Mr. Camusi: I see. The Court: But I think at this time you are bound by the Agreement." Thence the court (R. 839) stated concerning appellant's management fee that Tidwell could not

object to Richman being paid at least a reasonable fee because she had accepted the services and further: "just to keep from having laches run against her, wouldn't she find herself with what she had accepted?" With this state of the record the court took the matter under submission. (R. 842).

Concerning these same utility bills, attention is directed to the Receiver's Accounting. It will be noted that the Receiver paid each month utility bills for the five apartment houses (R. 108, 110, 114) and in February, (R. 115) the utility items of "water", "electric and power", "gas", "telephone and telegraph" in the amount of \$1307.32. Further note, the Receiver's expenditures made in March totaling \$6,121.40 which included utility bill payments to the Department of Water and Power, Pacific Telephone and Telegraph Company, and Southern California Gas Co., in the amount of \$1329.05. (R. 119).

E. Catalytic Units.

Tidwell argues (pp. 30-32) that these units should be charged against the Receiver's funds. She points out (p. 31) that the Receiver could have had them installed in December, apparently acknowledging default of the Receiver. Thence, that the units were not installed until after January 22nd. Payment did not become an obligation of Richman Trust or the purchaser of the trust property until the units were accepted, as specifically provided by the terms of the Contract for the catalytic units. (R. 802). The contract specified the time for payment. "A deposit of 10% of the above

quoted amount is required upon the execution of contract, balance of which is payable upon receipt of the Los Angeles County Air Pollution District Permit to operate". The Permits were issued (R. 805) on March 9th and June 2nd, 1954. The purchaser, Tidwell, was, under the Settlement Agreement paragraph 4, "entitled to all receipts and shall assume all operating obligations of Richman Trust from March 1, 1954 on" Uncertainty exists in the record as to the day on which installation was completed. No uncertainty exists as to the dates on which payment for these units became an obligation. The permits were issued on March 9th and June 2nd, 1954. Had the Richman Trust continued, payment for these obligations would have then been required, but the parties expressly contracted that the purchaser (Tidwell), pay this obligation accruing after March 1st.

There are many other contentions or remarks contained in the Tidwell brief, such as: (p. 30) that only one of the contracts for the catalytic units was placed in evidence. This is erroneous but apparently the printer failed to print both contracts. He made the note (R. 803) "(duplicate copy attached)", which is not entirely correct because the contracts while identical in provisions and terms varied, as to designation of apartment house; and (p. 20) "The trial court permitted the Receiver to reimburse himself for the sum of \$89.20 for copies of depositions paid by him. (Order of Court R. 195)", an auditing of the amounts shown in the Order will reveal that reimbursement was entirely deducted from appellant Richman's remainder of the

funds, as determined by the trial court, or the net sum to him of \$4,974.56. This fallacious accounting, evidenced by Tidwell's draft of the trial court Order and her pending motion to this court for an Order confirming the trial court's conditional ex parte Order, require no comment. Appellant relies upon his proposed distribution of funds appearing (Op. Br. p. 66).

II. Reply to Receiver and His Attorney.

An effort will again be made to quote from this voluminous record to demonstrate the unusual occurrences and conduct in this receivership.

A. Receiver's Charge of Untrue Statements.

At pages 2 and 3 he asserts by conclusion, not only untruthfulness but incompleteness; thence he asserts a few examples. Completeness requires a review of the whole record, and this is invited. Appellant can only reply to the examples. The first is that the record was not sufficiently cited concerning the statements at the top of page 34 (Op. Br.), as to whether the Receiver was available to attend to a refrigeration breakdown occurring in February, 1954, in one of the large apartment houses. The manager testified (R. 471-):

"I started trying to get in touch with Mr. Hallberg on the afternoons of the 17th, 18th, and 19th, and was never able to contact Mr. Hallberg. About 5:00 or 5:30 on the evening of the 19th Miss Cosgrove called me and asked me if I had been trying to contact Mr. Hallberg, was something wrong with the refrigeration?"

The only diary entry of the Receiver and Miss Cosgrove appears on the 19th: "To W A (Western Arms Apartments) Re: Refrig." (R. 403A). At R. 472 the manager explained she, on the 20th, after contacting appellant, employed another refrigeration company.

"Then he (Hallberg), called me on the phone. Q. On the morning of the 20th? A. Yes, I don't know where he was, I just judged he was at the office."

Thence the Receiver charges that several items set forth on page 42, Op. Br., as being a part of the Receiver's accounting, are not a part of his Account. The first amount was a "salary expense item of \$1628.18 R. 410)." Bearing in mind this Receiver asserts special accounting experience it is difficult to see why he should charge untruthfulness unless it be for the purpose of prejudicing appellant before this court. All the Receiver had to do to ascertain the \$1628.18 salary expense he incurred was to add the following items for salaries appearing in each one of his monthly itemizations of disbursements:—R. 110—\$450.00 and \$25.00; R. 114 — \$450.00; R. 116 — \$600.00; R. 119 — \$103.18, totaling \$1628.18, and each being designated in his own itemization as "salaries and wages", except the last, being designated "Jean Findeisen—Office". The same procedure for petty cash items.

Additional improper examples are: That appellant's statement (Op. Br. p. 44) asserts that the Receiver in no manner accounted for an insurance refund of \$158.00, and that he turned it over to Tidwell (citing

R. 664). The record shows (R. 664) that Tidwell's attorney stated as follows: "If they think, defendant Richman thinks he is entitled to any of this money, that is something for the plaintiff and defendant to fight out in their lawsuit." The record from that point to R. 670 establishes that not only did the Receiver fail to report this refund in his accounting, but further, Tidwell admitted the right to a refund was "turned over to Mrs. Tidwell". Thence the court stated:

"Let's mark that down as one item to be considered in the pretrial that is coming up."

Thence, again at R. 671 the court directed:

"That is where I think we should consider it, instead of considering it with this Receiver who was subject to an Order."

Insofar as the Receiver is concerned it is an admitted failure on his part to acknowledge anywhere in his accounting that a refund was payable upon the \$400.00 he reported in his accounting as having been expended by him. (R. 113)

Another asserted untrue statement is: that the Receiver intended to delegate his receivership duties to Miss Cosgrove (the maiden name of his wife), R. 380 was correctly cited, it is as follows:

"Q. At the time you were requested to act as Receiver in this matter by the Court you had then intended to delegate most of the work to Miss Cosgrove, is that correct?

“A. I had intended to delegate the housekeeping to Miss Cosgrove.”

There is no uncertainty of the intent of Hallberg to turn over the performance of the important receiver-ship duties to his wife when R. 380 is supplemented by R. 433-4, where he admitted that he went out on December 1st, or during the first three days after the Decision of November 30th to appoint a receiver, and introduced Miss Cosgrove to the managers in the following manner:

“Q. What did you tell the managers?

“A. I told them she was going to act for me.”

See also R. 264-265, the Receiver's direct testimony explanation of rendition of services by Miss Cosgrove.

The fiduciaries Hallberg and Whyte, as a Receiver and an attorney, were supposed to be impartial in this transaction. Their failure to so act is evidenced by their improper charge of making untruthful statements.

B. Receiver's Preliminary and General Statement.

This generalization of the facts (pp. 4-9), is substantially correct except for the following conclusions:

1. The Receiver and Whyte assume that the Receiver had a right to act by the Decision of the Trial Court on November 30, 1953. The Receiver did not have this right until he filed his bond and qualified on December 2, 1953. On, before, and after

that date appellant was pleading with the trial court to fix the amount of supersedeas bond which was denied (R. 32, 216). Before qualifying they took over the bank account of the appellant, had collected monies from the managers of the five apartment houses and instructed the managers to pay the rents to them (R. 553-554). The Trial Judge aided the Receiver's attorney, according to their records, (R. 555), in obtaining a Receiver's bond; thus, it is improper for the Receiver and his attorney to claim fees from "December 1st, 1953". 2. Whyte's conclusion that his time "was devoted to defending the Receiver against Richman's attack," appearing page 6, is likewise an improper conclusion. The Receiver had refused to state what compensation he desired, and all the acts, or non-action, set out in the Opening Brief, had to be examined to determine what fee, if any, he was entitled to receive. Further, the attorney sought \$3,000, plus extraordinary fees in an undesignated amount. Is it proper for the Receiver to now say that appellant forced him to defend himself when appellant objected to certain items of his Account, after having sought to find out from the Receiver what fee he wanted, thence went forward on the Court's statement that all the facts should be developed—to develop all the facts? 3. At pages 7 and 8 the Receiver and his attorney assert there is no attempt to surcharge the Receiver and, therefore, appellant's errors No. 3 and 8 should be disregarded, citing and quoting R. 617-619 and R. 685-686. As stated (Op. Br. p. 66) appellant sought an Order conditionally surcharging the Receiver's account with the petty cash in

the amount of \$785.00, the February rents in the amount of \$1290.59, the compensation insurance refund in the amount of \$158.00, the court having, in fact, surcharged the Receiver in the amount of \$2027.25, being a premature payment by the Receiver on one of the apartment houses; the condition being that these amounts be a charge against Tidwell's right to a portion of the funds remaining in the hands of the Receiver, subject to their propriety being determined when and if it became necessary for Tidwell and Richman to litigate their Settlement Contract of February 19, 1954. (R. 139-144). The Receiver's partial quotation (pp. 7-8), avoided stating the following:

“Mr. Enright: I intend to and seek to charge the Receiver personally and submit that the charge should be against the fund.

“The Court: Well that means against the \$30,000 which he still has in his possession. . . .

“Mr. Enright: Could I have read? (The record read).

“Mr. Enright: Certainly, Your Honor, I stated that there is no need for this Receiver having to bring an action against the plaintiff to recover their money, that the plaintiff has received the benefits of and added to the fund; rather, charged to the plaintiff.” (R. 619)

Further, the Receiver failed to quote the portion of the record (p. 685), appearing before Mr. Whyte's statements in the record on that page which he has partially quoted in his Brief, page 8. At that point, in behalf of appellant, it was stated:

“Mr. Enright: I would merely point out the Court Order was that the Receiver retain monies under his control, the Order of February 26, 1954. This is an item of \$1290.59 that he did not retain. I am concluding the evidence on the point . Whether it is relevant or not, I can only state what the Court Order was.” (Op. Br. pp. 49-54).

C. Receiver's Topical Statements of the Case.

a. Receivers Representations.

At pages 9 to 11 the Receiver argues that he merely was “chiming in” when he stated in reply to the Court’s statements as to his experience and availability: “That is correct”. Appellant refers to his Opening Brief (pp. 16-22), which was and is an effort to state the record by quoting the record only. Appellant replies that he, at least, assumed the Court did not think that it was appointing the wife of Mr. Hallberg to supervise five managers in the operation of 400 units contained in five apartment houses which the parties themselves by Contract agreed had a value of \$1,200,000.00. (Settlement Agreement R. 141). In fact, apparently during the prolonged, intermittent hearings the Court was embarrassed as a result of its appointment, although it completely exonerated the Receiver in its ultimate Decisions. For example, the Trial Judge volunteered during the hearings, having failed to act upon the Petition to Disqualify:

“The Court: Yes, he came in at my request. I called him and asked him if he would be available to serve as Receiver. He wanted to know what it

would involve, and I told him in a general way what it would be. I made the call because, although my acquaintance with him has not been personally very extensive, I have known him casually and was a neighbor of his, and I have known of properties that I thought he was managing for an aged relative. It turns out from the deposition that it was his own property. I had known from just casual conversation that he had had a responsible part in the management of considerable income property in Chicago. I had thought for a term of years. And it turns out now it was just a little over a year, if the deposition is right." (R. 257-258).

Long after the appointment and during the course of the hearing, it was discovered that the Receiver's management of apartment property was as follows: During the depression in 1930-31 he was employed by Gus Eich who was a bondholder of certain bonds issued by a bank at Chicago. (R. 378). Secondly, as now acknowledged by the Receiver in His Brief (p. 16):

"About December, 1949, he and Mrs. Hallberg purchased a 16-unit apartment house in South Pasadena which they held for approximately eleven months and in which they installed Mrs. Hallberg's mother as manager."

As stated by appellant's counsel on November 30th, when the Trial Court called counsel in to deliver to them its Decision, holding that the trust was voidable, he relied upon the Court's integrity in selecting and appointing a Receiver of experience and integrity. He

then assumed by Mr. Hallberg's statement: "That is correct", that Mr. Hallberg was an experienced manager of Los Angeles area income property; that he did not mean that a place of business in Pasadena would be a four-family flat rented to strangers.*

As stated in the Opening Brief, if the representations made by the Receiver to his former neighbor, the Trial Judge, on the week before the Decision, (none of which appellant has been privileged to inquire concerning, and which must be accepted upon the volunteered statements of the Trial Judge), then at least the Receiver's hands are so unclean that they should be considered when fixing his fees and do not justify a fee of \$2,000 per month, when he was then expending a 40-hour work week as a permanent employee of the County of Orange at a salary of \$355.00 per month.

b. Petition to Disqualify.

The Receiver's Topical Statement is an argument and not a statement of facts. Appellant here refers to its Opening Brief pp. 22-23. The Court having closed the matter by failing to act and stating: "It is closed" (R. 456), there is no justification for the Receiver to draw the conclusion "it would have been wholly unnecessary" to call the Trial Judge as a witness. A litigant who, according to the Trial Judge, has never taken any trust funds (R. 212), and who is the half

*In deposition proceedings the Receiver testified (R. 872) that his residence and business address was 1202 Seaview, Corona Del Mar (Orange County). The Receiver had resided at this address since 1952. (R. 371). His business address was at Corona Del Mar long before the November 30, 1953 representation that he had a place of business in Pasadena. (R. 215).

owner of assets of \$1,200,000, should be permitted to inquire into the circumstances surrounding the Trial Judge who stated he would consider fixing supersedeas bond (R. 216, 217, 31), but instead participated in obtaining a Receiver's bond (R. 555) to make effective the appointment of one who represented to the Judge he had acted as Receiver for years, had managed extensive properties in the area of the \$1,200,000 assets, and had a place of business, when each statement was at least an equivocation, if not a false statement.

c. Receiver's Availability and Earnings.

The Receiver, at page 12, now acknowledges his County of Orange, 40-hour week, 8 hours a day, Monday through Friday employment. This, he and his wife never disclosed to anyone (R. 526) before the termination of his active duties, or until deposition proceeding after he filed his accounting. Thence the Receiver relies upon the volunteered statement of the Court (R. 258), that appellant had not devoted his entire time to the acting as agent for the Trust of the same properties, he being one of the Trustors, therefore, the Receiver could take, we assume, full time employment at the County of Orange. The record will not justify such a volunteered position. The Receiver stated to the Court and it stated to the parties that the Court had interviewed Mr. Hallberg the week before its November 30th decision and had been advised that the Receiver was available to take over management of the Trust property. The Receiver qualified on December 2nd, and on the following day as a result

of a previous application was employed to start full time work for the County of Orange on Monday, December 7th. He should be compensated proportionately upon the basis of his earnings at the County of Orange, being \$355.00 per month (R. 328), or his immediately preceding employment by Narmco Corp., a fishing pole manufacturer, at \$350 per month (R. 364), or his Morgan Construction Company drawing account of \$100 a week from May to December, 1951. Perhaps consideration should be given to the Receiver's assertions that he had a salary of \$10,000 a year in 1947 while employed by Refrigeration Corporation until "they got into financial trouble back East" (R. 875), although he now states in his Brief: "About 1949 Hallberg began having trouble with his back—for months he was in bed and in the hospital and accordingly his employment record from then until the time of the Receivership was spotty." (p. 15). But, yet we are left in doubt because he states (p. 16), that he spent eleven months, commencing December, 1949, doing: "hard physical work on the premises, including painting, carpeting, hanging doors, laying floor tile, and repairing the roof" of the 16-unit apartment house he and Mrs. Hallberg owned during the period. Further examples of the Receiver's evasiveness when asked concerning his qualifications by experience and previous earnings are: the Receiver had explained that he made an investment of \$18,000 (R. 365), in Morgan Construction Company, and had a drawing account during the period May or June to December, 1951, of \$100 a week; his answer when asked if he knew a G. T.

Gillian was "I know of him", he explained that he was a helper or gave aid in rendering services as an efficiency expert. His assistance was organizing a group but:

"at that time I was not capable of any sustained work.

"The Court: You had some physical difficulty?

"The Witness: Yes, I have been bothered for several years with a bad back that incapacitated me; over months on end I was in bed and the times I got up were limited. I didn't do any physical work and I finally had an operation." (R. 366-367)

Secondly, the effort upon deposition of the Receiver and his attorney (R. 881) to not disclose the details concerning the Receiver's County of Orange employment, when he should have been himself attending to the new duty of operating the apartment houses containing 400 units. The trial judge criticized appellant stating the Receiver was treated like an "embezzler" (R. 859). With such an admitted actual employment record, appellant asserts no consideration should be given to the Receiver's claims that he made large salaries before 1951.

d. Receiver's Services.

The Receiver asserts he handled "the myriad problems which arise in connection with the operation of five large apartment houses" and enumerates some of the problems. Reference is made to Appellant's Opening Brief (pp. 29-32), or to the Receiver's direct testi-

mony (R. 263-270), where he explains how he delegated the problems involving the apartment houses; or to his qualified admission on cross-examination of his intention to act as Receiver through Miss Cosgrove, his wife, (R. 433-434) to determine how he performed the trust of a receiver.

The Receiver, at page 17, asserts that he "set up a new and improved bookkeeping system" (without a journal (R.274).) At another point the Receiver and his attorney attempt to explain why they were not able to comply with the Court Rule requiring a Receiver to make a report within 60 days. The sufficiency of this "new" and whether they were "improved" books, is substantially answered at R. 46 where respondent Whyte by Affidavit states why the accounting had not been filed,—when seeking an extension of time.

"Affiant has been informed by Mr. Roy Harrison, said Receiver's bookkeeper, that said Harrison has had considerable difficulty in assembling the accounting data which must be included in said report, notwithstanding the fact that he has been working up the same for a number of days. Said Harrison has further informed this affiant that he will be unable to have said accounting data in final form prior to some time the week commencing January 31, 1954."

The fact is that the report was not prepared or filed, notwithstanding the Receiver's asserted bookkeeping experience and the availability of the services of a bookkeeper and attorney.

The Receiver admits that appellant charges him with violation of the Court Order terminating his active duties "5:00 o'clock p. m. Sunday, February 28, 1954", having previously denied that the three items of \$785.00 petty cash, \$1290.59 rents which the Receiver's accounting reported as being \$2,000 (R. 90), and prepayment of \$2,027.25 to the benefit of Tidwell, and thence he attempts to justify his ex parte interpretation of the Settlement Agreement on these items. He first states that petty cash in the possession of his managers was not money "under the control of the said Receiver", rather, it was an asset of Richman Trust: "and became the property of Mrs. Tidwell". The Court Order was that he terminate his active duties at 5:00 p.m. He did not take possession of these monies under his control, he states, "for the good and sufficient reason that they were part of the working properties of the buildings". He fails to acknowledge that he, in his accounting, charged himself (R. 104) with \$785.00, being received, but before he terminated his active duties he issued checks all in February, 1954 to the five different apartment house managers for the following sums: \$91.18, \$95.73, \$18.61, \$54.81, \$65.08 (R. 115), to re-establish the petty cash fund of \$785.00. These monies were drawn from the bank account.

Reference is here made to the Reply to Tidwell's Brief analyzing the Settlement Contract, the Escrow Agreement called for by the Contract, the Stipulation of the parties executed pursuant to the Contract, and the Court Order based upon the Stipulation. Suffice it

to here state the Receiver, by law, is required to be impartial. The Receiver and his attorney admit that on the Sunday afternoon, after their golf game, they called the Trial Judge by phone, advising him that Mr. Enright and Tidwell's attorneys had disagreed concerning certain other expenses incurred in the operation of the receivership. (R. 428). An impartial Receiver should have at least given appellant an opportunity to submit his position to the Court upon the replenishing of this petty cash fund and upon the other items involved in this appeal.

Concerning the rents collected by the managers before 5:00 p.m. February 28th, at which hour he was to terminate his active duties, the Receiver asserts (p. 18) he could not maintain his control over these funds or take possession of them because "the period in question being a weekend the banks were closed." The Receiver justifies his failure to act until 5:00 p.m., stating the Trial Court decided, (Citing R. 182-183), that these rents belonged to the purchaser Mrs. Tidwell,—he acted before this decision now on appeal. At least the litigant was entitled to the Receiver continuing his active duties and collecting these monies, since he states he came to Los Angeles from Orange County on weekends, and this was a weekend, until the Trial Court decided the question. The Receiver, thirdly, justifies his payment of \$2027.25, because it would become due March 1st. He relies upon the Trial Court's defense of him when it, in its Decision, states it was reasonable to pay in advance. He admits appellant correctly states, in his Opening Brief (R. 630-631),

that the Receiver had never previously prepaid these installments; in fact, they were days delinquent. Further light is thrown upon all these items by R. 632, which enumerates a great number of check stubs dated February 27th and 28th, by the Receiver, when he was performing his duties as Receiver on weekends, he could have taken possession of the funds "under his control"; rather, obviously he intended to and did benefit Tidwell. The Receiver's conclusion that not one penny of the three items "was lost or dissipated", is true insofar as Tidwell and the Receiver are concerned, but to date they have been more than lost (appellant's expenses in this proceeding considered), insofar as appellant is concerned.

e. Accounting Services and Experiences.

Appellant relies upon its Op. Br. pp. 32-34, the admissions in the Receiver's Brief, and other points throughout this Reply.

f. Refrigeration Break-Down.

The Receiver, at page 21, in no manner attempts to refute his own testimony and diary which are quoted at page 34 Op. Br. Suffice it to again state that the litigants were led to believe that a full-time court Receiver had been appointed, who would be available each day to attend to emergency problems such as refrigeration breakdowns when they occurred. Admittedly he was not available, asserting he visited the apartment houses two days after the break-down and found the refrigeration system working. Miss Cosgrove

testified she, upon discovering the problem, phoned Mr. Hallberg at the Orange County Assessor's Office and that she had not told anyone he could be reached there. (R. 526).

g. Air Pollution—Criminal Citation.

The Receiver asserts that "it is only necessary to state the facts fully and accurately" (p. 21), in his effort to explain why these Contracts, executed before his qualifying as Receiver on December 2nd, were not performed until after February 1st. His statement (pp. 21-24), is substantially in accordance with appellant's statement (pp. 35-37), except in two particulars. The Receiver attempts to justify his nonaction because "Harrison having failed to carry out the instructions given him about the first of the month", asserting: (p. 23) "On January 22, 1954, Hallberg found the drawings for the air pollution control equipment at his office at the Oliver Cromwell". (R. 642). A reading of R. 642 reveals:

"The next time he (Harrison) was able to get in touch with Mr. Hallberg was when he came to the office of the Receiver at the Oliver Cromwell on January 22nd. Mr. Hallberg went through his briefcase and found the Application and approved plans. That Mr. Hallberg then dictated the letter for Mr. Harrison to send to the Air Pollution Control, Inc., which Mr. Hallberg signed, enclosing the Plans and Specifications and the Approval of the Application to Air Pollution Control, Inc."

The letter itself appears R. 646. Smog control was and is a serious metropolitan Los Angeles problem. Had the Receiver been attending to the operation of these apartment houses each day, instead of Friday afternoons and weekends such as this particular January 22nd, the smog control units could have been installed when the materials were available (R. 710), in December, provided, of course, the attorney for the Receiver had reviewed the Contracts before December 30th—being twenty-eight days after the Receiver qualified. Thence appellant would not now be resisting allowance of attorneys' fees for services rendered to one of the managers when she, with appellant, were charged with a crime, because of the Receiver's neglect, in the Los Angeles Municipal Court.

h. Receiver's Fees.

At pages 24-28 the Receiver again relies upon the Trial Judge's excusing his non-compliance with its local Rule 18(C), in an effort to reply to appellant's Statement of the Case (Op. Br. p. 37-43), thence he asserts that: "A licensed real estate broker and real estate appraiser", (not a property manager) testified on direct examination that a 5% of gross income would be a reasonable fee. He does not deny that at R. 313-14 this same witness produced, on cross-examination, the Los Angeles Realty Board Schedule of Management Fees, which provided: "Over \$2,000.00 the charge shall be 3%", which 3% includes all the expenses of the manager, e.g.: Harrison, bookkeeper, etc.; thence the Receiver (pp. 26-27) extensively quotes the Trial

Court's justification of the Receiver's fees which, among others, was that the Receiver was treated as though "he were accused of a crime". (R. 858). Appellant stands upon his Opening Brief statement and argument. Appellant asserts that the record will not justify the Trial Court's criticism of mistreatment of the Receiver, but that it will demonstrate a gross abuse of discretion in allowing the fees that were allowed. As previously noted at the opening of this Brief, we have spelled out for the Receiver and his attorney how they can trace the many expenditures made by the Receiver, as partially enumerated at page 42 of the Opening Brief; and further, for example at R. 606-7. The Receiver contends at page 27 that he should receive \$6,000.00, or \$2,000.00 a month, because Richman's fee as Agent would have been greater. Appellant was one of the trustees and trustors. The facts are that appellant during the period 1946 until the receivership increased the trust assets from \$375,000 to \$1,200,000. (R. 724). The law is that Receivers should be moderately compensated; are not entitled to be compensated upon the basis private industry compensates. We again quote from a Court of Appeals, as we did (Op. Br. 62): "The Supreme Court (U. S.) has given notice on more than one occasion that Receivers and attorneys engaged in the administration of estates in the courts of the United States and in litigation affecting property within the jurisdiction of those courts, should be awarded only moderate compensation, and that many of the allowances heretofore awarded have been too high." The Receiver's reliance upon California cases

(pp. 35-37) do not disagree with the Federal Court statement of the rule.

The Receiver's plea that he had the burdensome task of taking possession of unknown properties and familiarizing himself with them, installing his system of management and setting up his books, and then only three months later being compelled to close the books, might have merit had the Receiver, in fact, performed these services instead of becoming a full-time employee of Orange County. There is no evidence in the record he closed his books, or ever rendered a report from his books; rather, he filed an accounting which is a tabulation of receipts and disbursements and it is incomplete (to the extent at least he thought that he failed to collect rents of \$2,000.00, which were in fact \$1290.59); it failed to reveal surrender of the petty cash fund and the workmen's compensation deposit refund to Tidwell, and, generally is a mere scheduling of receipts and disbursements from a checkbook.

i. Objections to Receiver's Report.

Respondent-Receiver fails to answer the specific charges (Op. Br. p. 43-44), pertaining to the Receiver's Report. By Footnote 7, he again by conclusion asserts: "The inaccuracies and unreliability of his (appellant's) brief." This conflict can best be resolved by a reading of the Receiver's Report commencing R. 75, and there observe for example under Item 5, (R. 77) how the Receiver alleged his attending to receivership matters as having been "performed by him or his agents", which, upon hearing, disclose that substan-

tially all acts, were performed by Miss Cosgrove. (R. 263-270). The specific assertion of inaccuracies and unreliability refers to the \$158.00 refund upon the \$400.00 workmen's compensation insurance deposit. Neither the Report or Accounting anywhere makes reference to this asset which the Receiver, ex parte, determined was an asset of the purchaser Tidwell. Tidwell's counsel asserted (R. 670-671), the refund was turned over to Tidwell. The amount was uncertain at the time of the filing of the accounting but, the least the Receiver could have done was to report and account for it as being an undetermined refund. That he failed to do this likewise can only be ascertained by an examination of his Report and his Schedules of receipts and disbursements.

j. Attorney's Fees.

The Receiver asserts (pp. 29-33), appellant "does not challenge as reasonable the fee of \$1800.00". A reading of Specification 7 (Op. Br. 48), Statement of Facts, (Op. Br. pp. 44-46), and Summary—one sentence argument (p. 66), will demonstrate the impropriety of the contention. Again, attorney Whyte asserts he was "defending the Receiver" (and apparently himself), after appellant objected to a \$3,000.00 attorney fee, plus extraordinary, and objected to the accounting items especially those heretofore frequently discussed. Appellant developed the Receiver's background, experience, qualifications, and availability after the court had suggested the Receiver ask for reasonable fees, contrary to the local Court Rule, and

after the Receiver had refused to state what fee he would consider reasonable. As pointed out in the Opening Brief, this Receiver and his attorney were fiduciaries who were required to fully disclose and carry the burden of explaining their Account and justifying the fees they sought. As to whether the attorney is entitled to be compensated for expending his time in going out with the Receiver to take possession of the apartment houses and taking over the bank account, before qualifying, aiding in the accounting, and many other alleged services may *de novo* and originally be determined by this court. In *Campbell v. Green*, 112 F. 2d 143, the rule was stated concerning the power of the Courts of Appeal concerning attorney fees:

“The court, either trial or appellate, is itself an expert on the question and may consider its own knowledge and experience concerning reasonable and proper fees and *may form an independent judgment either with or without the aid of testimony of witnesses as to value.* (Emphasis added); Citing C.J.S. Attorney & Client, Sec. 191(d).

Other Federal court decisions following the rule are: *Mercantile Commerce Bank & Trust Co. v. Southeast Arkansas Levee Dist.*, 8 Cir., 106 F. 2d 966; *Merchants' & Manufacturers' Securities Company v. Johnson*, 8 Cir., 69 F. 2d. 940; *Blackhurst v. Johnson*, 8 Cir., 72 F. 2d. 644; *Federal Oil Marketing Corporation v. Cravens*, 8 Cir., 46 F. 2d 938; *Twentieth Century-Fox Film Corp. v. Brookside Theatre Corp.*, 8 Cir., 194 F. 2d. 846 (1952 Certiorari denied 343 U. S. 942).

Appellant submits that even the original \$1,000.00 allowance of the Trial Judge is excessive, the nature and manner of performance of services rendered by the attorney for this Receiver, this whole record considered.

Conclusion

The clear, apparent and obvious errors of the Trial Court's construction of the Settlement Agreement, after it had stated, at an adjourned pretrial hearing on September 27, 1954, that if it changed its ruling as to the admission of evidence, it would appoint a Master to receive evidence, forces appellant to charge gross abuses of judicial discretion by the Trial Court throughout this proceeding. Appellant, whom the Trial Court referred to as "a very well educated and capable lawyer" (R. 8), and his counsel, have never observed such abuse of judicial discretion. Their concept of judicial discretion is as set forth in *Langnes v. Green*, 282 U. S. 531, 541; 51 S. Ct. 243; 75 L. Ed. 520, 526:

"The term 'discretion' denotes the absence of a hard and fast rule. The *Styria v. Morgan*, 186 U. S. 1, 9, 46 L. ed. 1027, 1033, 22 S. Ct. 731. When invoked as a guide to judicial action it means a sound discretion, that is to say, a discretion exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result."

From the inception of the receivership the Trial Judge arbitrarily exercised his discretion. He refused to fix the amount of supersedeas bond, rather, he directed the proposed attorney of the Receiver (who had then been unable to post his bond), to advise the bonding company to write the Receiver's bond and the premium would be paid out of the estate. Supersedeas is discretionary but the discretion must not be arbitrary. Here, the extraordinary remedy of receivership was imposed upon a successful member of the Bar, who had also successfully engaged in many business ventures; who was a half owner of the Trust and as Agent for the Trust had, during his agency, substantially increased the Trust's assets and who had admittedly not appropriated any trust funds and at most, was charged with obtaining an undue advantage because of his fees. In sequence, the Trial Judge extended the Receiver's time to comply with the local court rules for filing his Report; the Trial Judge instructed the Receiver, contrary to long established local rule, to ask for a reasonable fee. After the Report was filed and when appellant questioned the correctness of the representations, the Trial Judge stated had been made to him before the Receiver was appointed, and after appellant had objected to the Report because of the various benefits the Receiver had permitted Tidwell to obtain, the Trial Judge advised appellant: "No evidence will be taken concerning the appointment of the Receiver in this action." (R. 157). Throughout the proceedings to determine reasonable fees, the Trial Judge constantly came to the aid of the

Receiver when it became necessary to establish the facts pertaining to the Receiver's experience, qualifications, previous rate of compensation, and truthfulness of his representations. At the inception of the proceedings (R. 256), the Trial Judge asked appellant's counsel: "What do you think is reasonable, Mr. Enright?" After counsel explained the events which caused him difficulty in suggesting a fee, the Trial Judge stated: (R. 261) "We had better take full evidence on what he (Receiver) did." Appellant still desired to avoid such extensive hearings and shortly thereafter counsel (R. 265-267), proposed a fee thought to be reasonable. Long thereafter, when the facts were being developed, the Court suggested to counsel that a career should not be made out of the case, and the Receiver was asked what fee he would consider reasonable (R. 416), and he replied he would rely upon the Court to fix his fee. The facts pertaining to the representations made by the Receiver to the Trial Judge were only partially developed because the Trial Judge failed to rule on the Petition to Disqualify, since he was a witness to the representations. There is no conflict in the evidence as to the Receiver's earning capacity at the time he qualified by posting bond and taking the oath to act as Receiver. His salary as an employee of the County of Orange, Assessor's Office for a full work week was \$355.00 per month. Immediately before being so employed, his salary as an employee of Narnco, a manufacturer of fishing poles, was \$350.00 per month. Upon this state of the record, appellant contends that the Trial Judge grossly abused

his discretion when he awarded the Receiver a \$6,000.00 fee for less than three months services. Yet the Trial Judge states in explanation of such order (R. 858):

“Mr. Hallberg asked for less than he got out of the court. I increased, not the prayer of his petition, but the tenor of his testimony, because I felt that he had not given any account to the element of having to account so fully in court, as well as by the accounting which he had prepared and filed.”

The Trial Judge then discloses what appears to be his personal prejudices when he states (R. 859) that the Receiver was treated like an embezzler; and (R. 863) that this Receiver would not care to act as Receiver again because of the “criticism and acrimony which attends being a receiver”.

There is an absence of what would be “. . . equitable under the circumstances and the law, . . . ” within the *Langnes v. Green* definition of discretion, in the November 19, 1954 Order of the Trial Judge fixing fees and directing distribution of the funds remaining in the hands of the Receiver. This is likewise true of the *ex parte* conditional Order made by the Trial Judge on September 9, 1955, which we now understand has been approved by this Court. If it is possible to reconcile the addition of the September 9, 1955 accounting procedure Order with the remainder of the November 19, 1954 Order, such reconciliation can only be had if we assume that the amounts specified throughout the November 19, 1954 Order are to be

changed to the amounts specified in the September 9, 1955 Order.

The discretion of the Trial Judge was improper concerning the construction of the Settlement Agreement and division of the funds in the hands of the Receiver, for the following reasons: The Court improperly: 1) awards Tidwell the \$785.00 petty cash funds the Receiver had under his control; 2) awards Tidwell the rents collected by the Receiver's managers before 5:00 p.m. on February 28, 1954 in the amount of \$1290.59; 3) awards Tidwell a compensation refund in the amount of \$158.00; 4) awards Tidwell one-half the utilities in the amount of \$1877.50; taxes in the amount of \$4,952.77; catalytic smog units in the amount of \$2600.00, or a net to Tidwell of \$4715.13. The Court once exercised its discretion before decision by stating evidence could not be received concerning utilities and taxes, because Tidwell was bound by the written agreement and escrow carrying it out, and then stated if it changed its mind it would appoint a Master to take evidence. To construe the Settlement Agreement, Stipulations, and Escrow Instructions of the parties in such a manner was a gross error of law and not supportable by the "the reason and conscience of the judge", as those words are used in *Langnes v. Green*. The Court further had no jurisdiction or power to construe the Contract except for the purpose of conditionally surcharging the Receiver, because this was a Contract made by the parties litigant after judgment and pending motion for new trial or a new and different judgment, which Settlement Contract was not

before the Court except to the extent the Receiver himself *ex parte* construed and acted under the Contract when leaving the insurance refund, petty cash funds and the rents for Tidwell's agent Udall to obtain.

Appellant prays that the Order and Judgment of the Trial Court dated November 19, 1954, as conditionally modified by the Order of September 9, 1955, be reversed; that this court determine that the Settlement Contract of the parties requires the conditional surcharging of the Receiver, in accordance with the accounting set forth on pages 66, 67 and 68 of Appellant's Opening Brief; and that this Court fix the amount of fees payable to the Receiver and the amount payable to the attorney for the Receiver, both fees to be subject to the costs incurred by appellant upon this appeal.

Dated: October 4, 1955.

Respectfully submitted,
BRADY, NOSSAMAN and WALKER
and
JOSEPH T. ENRIGHT
By: JOSEPH T. ENRIGHT
Attorneys for Appellant.

IN THE
United States
Court of Appeals
For the Ninth Circuit

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vs.
BRADLEY MINING COMPANY,
Appellee.

BRIEF OF APPELLANT

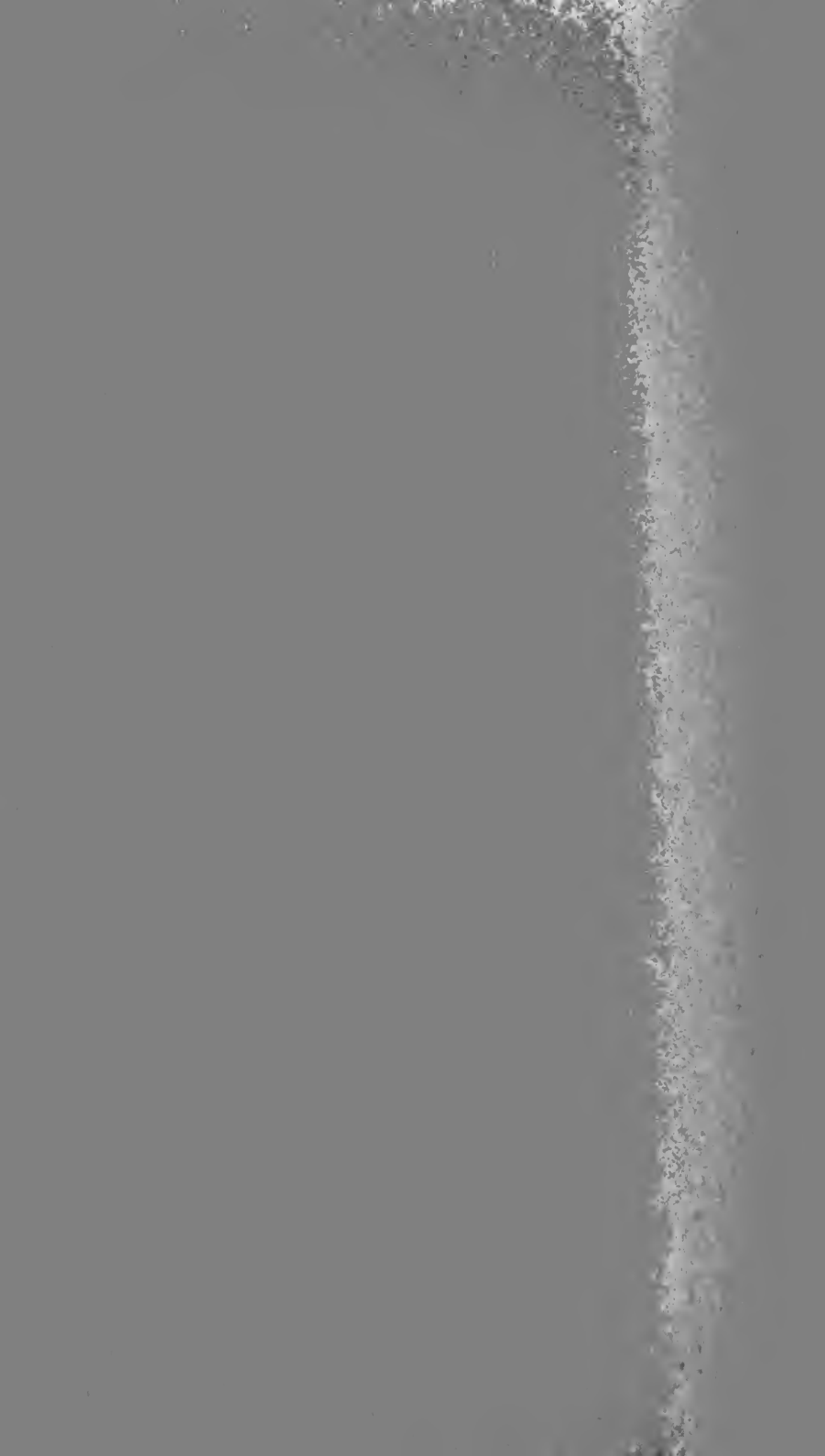
*Appeal from the United States District Court
for the District of Idaho, Southern Division*

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E. H. CASTERLIN,
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Attorneys for Appellant

FILED

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PAUL P. O'BRIEN, CLERK



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for the District of Idaho, Southern Division*

STATEMENT OF CASE

United Mercury Mines Company, hereafter called United, brought this action against Bradley Mining Company, hereafter called Bradley, alleging that by a written instrument dated December 31, 1941, United conveyed to Bradley the Meadow Creek and Hennessy groups of mining claims in Valley County, Idaho, and in consideration thereof Bradley agreed to pay United a royalty of five per cent on all net smelter returns, net revenue and net mint returns, as defined in said agreement, for all minerals, ores, metals or values (hereafter called values) taken from

said mining claims for a period of nine hundred ninety-nine years and thereafter (R 3-6); that in 1949 Bradley, at its own costs, constructed on the claims and has always owned the Yellow Pine smelter in which it has smelted concentrates produced from ores taken from said claims and has sold the saleable products therefrom to unknown purchasers for unknown sums of money (R 8); that Bradley is obligated to pay royalty on the saleable products from the smelter on the basis of net revenue as defined in the agreement, which it refuses to do (R 9); that Bradley contends it is only obligated to pay royalty on the concentrates smelted in the Yellow Pine smelter on the basis of net smelter returns as defined in the agreement (R 9), using a formula especially devised by it for that purpose (R 9); that the difference between the royalties based on the net revenue and those based on the net smelter returns exceeds \$10,000.00, which is owing United (R 10); that an actual controversy exists between the parties as to the provisions of the agreement applicable to the computation and payment of royalties and the nature and extent of the obligation of Bradley to furnish information to insure United that it is receiving the royalties to which it is entitled (R 10); and praying judgment interpreting the provisions of the agreement, decreeing that Bradley pay royalties on the saleable product from the smelter on the basis of net revenue, requiring Bradley to furnish the information requested by United, and requiring an accounting (R 11).

Bradley answered by admitting the agreement, the construction and ownership of the smelter, the

smelting therein of concentrates from ores taken from the claims, the sale of the saleable products from the smelter to purchasers, and the existence of the controversy; by denying its obligation to pay royalty on the basis of net revenue from the sale of products from the smelter, that any money is due United on account of royalties, and that it has refused to give the requested information; and alleging that the royalty to which United is entitled is to be computed on the basis of net smelter returns as defined in the agreement on the concentrates from ores taken from the claims before they are smelted and as a second affirmative defense that any other method of computation would be unjust, would result in taking property unlawfully, would unjustly enrich United and would be contrary to the terms of the agreement as interpreted by United (R 41-50).

After the issues were thus joined, United moved to strike the second affirmative defense (R 50); Bradley moved for judgment on the pleadings (R 51); and United moved to strike certain portions of the affidavits supporting the motion for summary judgment (R 71, 112).

On October 10, 1952, the court denied all of the motions and in its order stated, "I will not set a definite date for trial of the case at this time in the hope that the parties may be able to adjust their differences. But it will be set for some early date if that contingency becomes necessary." (R 140).

On February 1, 1955, this cause came on for pre-trial pursuant to notice. (R 187).

At the pre-trial Bradley stated that the following issues remained to be determined:—(1) should royalty be computed on the basis of net smelter returns (R 198); (2) if so, shall the royalty be computed as Bradley has computed them in the past upon the value of the concentrates, relating those values to what might reasonably be expected from sales to independent smelters, or should they be computed on the returns from smelted products less normal smelter charges, and what are net smelting charges (R 198); (3) has Bradley fairly calculated and paid royalties upon the basis it has followed in the past (R 199); (4) if royalties are to be based on the alternate plan, what is the fair rate of depreciation and the fair return upon the investment to be charged and deducted (R 199); if they deny it (that Bradley has paid on the basis of net smelter returns) (R 206), then we are put to our proof and this has been denied by United (R 201).

At the pre-trial United stated the additional issues unresolved,—(1) do Bradley's books correctly show the amount of net smelter returns on all concentrates processed at the smelter used in its computation of royalty (R 200-201); (2) has Bradley computed net smelter returns on the same basis as independent smelters (R 201).

At the time of the pre-trial the record disclosed no issue of law then pending. The record discloses no trial on any issue of fact.

At the pre-trial conference, the court entered a judgment dated that day dismissing the complaint (R 189).

On February 21, 1955, United filed Notice of Appeal (R 191) and on the same day filed a Cost Bond (R 191).

JURISDICTION

Jurisdiction of the District Court is based upon diversity of citizenship, United being a citizen of Idaho and Bradley being a citizen of California (R 3, 41) and the amount in controversy which exceeds, exclusive of interest and costs, the sum of \$3,000.00 (R 10). Title 28, Section 1332 United States Code.

This court has jurisdiction to review the case on appeal by reason of Title 28, Sections 1291 and 1294, United States Code and Rule 73 of the Federal Rules of Civil Procedure.

STATEMENT OF FACTS

On December 31, 1941, United, as the first party, and Bradley, as the second party, entered into a written agreement a true copy of which is attached to the complaint as Exhibit 1 (R 141, 146), whereby United conveyed to Bradley the Meadow Creek and Hennessy groups of mining claims in Valley County, Idaho, (R 13) and

“For and in consideration of the premises and the conveyance and assignment of the above described properties, Bradley, for itself, its successors and assigns, does hereby covenant, promise and agree to pay to United, its successors and assigns, a royalty of five per cent (5%) on all net

smelter returns, net revenue, and net mint returns, as defined herein, upon and for all minerals, ores, metals or values, of any and every kind and character, mined, extracted or taken from the above described mining claims, or any part thereof, or from any lands, grounds or claims, lodes or deposits, within the exterior boundaries of said groups of claims; the payment of said five per cent (5%)royalty to begin with the first returns received on concentrates shipped from Cascade, Idaho, after Midnight, December 31, 1941, and to continue thereafter for nine hundred and ninety-nine (999) years and as long thereafter as minerals, ores or values shall be extracted, mined or taken from the above described property, at the times and in the manner hereinafter provided;" (R 15).

The agreement also provides:

"By net smelter returns, as used herein, is meant the amount received from the smelter from any and all ores, concentrates, metals or values shipped to a smelter, it being understood that the smelter will deduct its normal smelting charges and charges for railroad freight from Cascade, Idaho, to said smelter shall also be deducted.

By net revenue, as used herein, is meant the amount paid by any purchaser from the sale of concentrates, ores, metals or values shipped, taken or produced from said properties, less marketing and shipping costs from Cascade, Idaho.

By net mint returns, as used herein, is meant the amount paid by any United States Mint, branch or agency thereof, less all shipping and marketing costs from Cascade, Idaho.

It is agreed that in addition to the deductions of railroad freight from Cascade, Idaho, to the smelter, market, or mint, that Bradley shall also be allowed to deduct from the net smelter, market, or mint returns Two Dollars and Fifty Cents (\$2.50) per ton for each ton of concentrates, ores, metals, or values hauled or shipped from the above-described property to Cascade, Idaho, the said sum to be deducted from the net smelter, market or mint returns before net royalty herein provided for is computed.

It is also agreed that in the event that concentrates or bullion are hauled or shipped by truck to a smelter, market, or mint beyond Cascade, Idaho, there shall be deducted from the net smelter, market, or mint returns the amount for trucking that it would have cost to ship the same by railroad from Cascade, Idaho, to the smelter, market, or mint to which the same are trucked.

Should a smelter or other reduction works be erected between the mining property herein conveyed and Cascade, Idaho, then there shall be deducted from the net smelter or reduction returns a fair charge for trucking from the mine to such smelter or reduction works.

It is agreed that reference in this instrument to 'Cascade, Idaho,' shall be deemed to include Cas-

cade, McCall, or any nearby place from which shipment is made by rail.

The above covenants on the part of Bradley to pay the royalty herein agreed to be paid shall be considered and held to be covenants running with the lands, grounds, minerals, ores, values, and mining claims hereby conveyed to Bradley and shall be binding upon Bradley, its successors and assigns, forever." (R 17-18).

This agreement also provides that:

"It is agreed that Bradley shall furnish United all necessary information that United may require to assure it that it is receiving the royalty to which it is entitled hereunder, and that United shall have the right to inspect, examine and make copies of the books and records of Bradley and supporting data at least every six (6) months so as to enable United to satisfy itself that it is receiving its proper royalties." (R 16)

and that

"Except that in the event Bradley, its successors and assigns, fails or refuses to pay any royalties herein reserved when the same shall become due that the said United shall have a mortgage lien in, to, and upon all of the above and foregoing described properties to secure the payment of said sums and Bradley does hereby mortgage the above and foregoing described properties, and any interest it may hereafter acquire in the Midnight Group

hereinafter described, and the whole thereof, to secure the payment of said royalty." (R 19).

United has conveyed to Bradley all of the said mining claims (R 142, 146).

From December 1, 1941, to July 1949, Bradley extracted principally gold, silver, antimony and tungsten from the claims (R 146) and shipped the concentrates to smelters or reduction plants in which it had no interest and paid United royalties on the basis of net smelter returns (R 147).

During the year 1949, Bradley built the Yellow Pine smelter on the claims at its own costs. Bradley has owned the smelter at all times. (R 142, 146).

The Yellow Pine smelter went into operation in July 1949 (R 142, 146), and thereafter 45%—based on values—of the concentrates produced from the ore mined on the claims was shipped to outside smelters (those in which Bradley had no interest (R 147)) and royalty thereon was paid on the basis of net smelter returns as defined in the agreement (R 143, 147), and the remaining 55%—based on values—of the concentrates was smelted at the Yellow Pine smelter (R 144, 148).

Title to the concentrates shipped to the outside smelters passed from Bradley to them upon receipt of the smelter returns accompanied by the settlement reports exemplified by Exhibit 2 (R 143, 148; 29-31).

Title to the saleable products from the concentrates smelted at the Yellow Pine smelter remained in Bradley until the same were sold and paid for (R 144, 148).

Bradley has sold saleable products from the Yellow Pine smelter to purchasers thereof and has received therefor a gross of \$5,129,607.73 (R 172) from which is deductible marketing and shipping costs from Cascade, Idaho, as provided in the agreement (R 17).

Bradley has not paid United the royalty of 5% based on these gross receipts from the sales of the said saleable products from the Yellow Pine smelter, less the marketing and shipping costs from Cascade, Idaho (R 145, 149).

Bradley has paid United on account of the royalties due and owing from the operations of the Yellow Pine smelter various sums of money determined by computing the value of the concentrates on the ground at the mouth of the roaster and relating these values to what might reasonably be expected from a sale of the same to independent smelters (R 198). This method of computation involves no sale of the concentrates or the smelted products therefrom (R 144, 148).

SPECIFICATIONS OF ERROR

- I. The District Court erred in dismissing the action.
- II. The District Court erred by not interpreting the contract in question in its final judgment, either as contended by the Plaintiff or as contended by the Defendant.
- III. The District Court erred by ruling, deciding and holding that the Plaintiff is not entitled to have an accounting from the Defendant based

upon the net revenue provision of the contract which merely disposes of the accounting feature and not the main issue of the interpretation of the contract.

- IV. The District Court erred in concluding that there is no genuine issue as to any material fact in this action.
- V. The District Court erred in concluding that there is no controversial question of fact to be submitted for trial by the Court.
- VI. The District Court erred in concluding that the defendant is entitled to judgment as a matter of law.
- VII. The District Court erred in drawing the foregoing conclusions and in entering the judgment herein without first making and entering findings of fact upon which said conclusions and said judgment is based.
- X. The District Court erred in holding and in entering its Memorandum Decision of October 10, 1952.
- XI. The District Court erred in holding and entering the Memorandum Decision of April 9, 1954.
- XII. The evidence is wholly insufficient in any of the foregoing conclusions to support the judgment entered herein.

STATEMENT OF ISSUES

Is Bradley obligated to pay royalty in accordance with the express provisions of the agreement, and,

if so, which provision of the agreement is applicable to the operation of the Yellow Pine smelter?

Has Bradley paid royalties in compliance with the applicable provision of the agreement?

Is United entitled to an accounting?

ARGUMENT

I

Assignments of Error numbered I, II, IV, V and VII may be condensed in the following restatement and may be so discussed. It was error to enter a judgment of dismissal without interpreting the contract either as contended by United or as contended by Bradley after having entered findings of fact on the then pending genuine issues of fact.

After the pleadings were closed and after all issues of law had been disposed of the cause came on for pre-trial under Rule 16.

The judgment of dismissal could not have been entered then by the court under Rule 41 (b) because (1) the defendant made no motion for dismissal on any of the grounds therein contained, (2) the defendant made no motion after the plaintiff had completed the presentation of its evidence, as no opportunity was afforded to give evidence at any trial, (3) the court never tried any of the issues of fact then pending, (4) no findings of fact were made and entered as provided in Rule 52(a).

This judgment could not have been entered then under Rule 56 because the motion for summary

judgment had previously been denied and the same had not been renewed, and there were pending genuine issues of fact that had not been resolved.

At the pre-trial hearing the simplification of issues was a matter of discussion. Bradley then stated certain issues of fact that remained undetermined and United stated certain issues of fact in the same condition. These were genuine issues. There never was a trial of any of these issues of fact, the same were not submitted on an agreed statement of facts and there was no confession of judgment with respect to any of these issues.

When issues of fact remain undetermined, they must be determined

88 C.J.S. p. 21, note 53

89 C.J.S. p. 418, note 54

46 C.J. p. 1224, note 60

Clair et al v. Sears Roebuck & Co., 34 F. Supp.
559

Van Wormer v. Champion Paper & Fiber Co.,
28 F. Supp. 813

Refractolite Corp. v. Prismo Holding Corp., 25
F. Supp. 965

by proof

Frank Adam Electric Co. v. Westinghouse Electric Mfg. Co., 146 F (2) 165

Donnelly Garment Co. v. National Labor Relation Board, 123 F (2) 215,224

presented by sworn testimony or by agreement of counsel

89 C.J.S. p. 373, note 36.

In the state of the record at the time of the pre-trial it was the duty of the court to set the issues for trial and thereafter to pass upon all of the issues raised by the pleadings and the evidence, and failure to do so is error.

89 C.J.S. p. 418

McCaffrey v. Elliott (CCA Fla)

47 F (2) 72.

Any decision on the issues of fact must be based on evidence admitted in the case

89 C.J.S. p. 417, note 46

and this evidence must be followed by findings of fact necessary to sustain the judgment

Rule 52(a).

The result is that there were genuine issues of fact, there was no trial, there were no findings of fact and there is no judgment interpreting the contract either as contended by United or as contended by Bradley.

It is axiomatic that contracts must be construed to give effect to all of its provisions as intended by the parties if it is possible so to do.

Wright v. Village of Wilder, 63 Idaho 122,
117 P (2) 1002
12 Am. Jur. p. 772
17 C.J.S. p. 707

It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, and, in the absence of any ground for denying enforcement, to enforcing or giving effect to the contract as made, that is, to enforce or give effect to the contract as made without regard to its wisdom or folly, to the apparent unreasonableness of the terms, or to the effect that the rights of the parties are not carefully guarded, as the court cannot supply material stipulations or read into the contract words which it does not contain so as to change the meaning of the words contained in the contract. The court will not make a contract for the parties where they have not made a contract or where the alleged contract is not enforceable.

Sorensen v. Larue, 43 Ida. 292,
252 P. 494
Weed v. Idaho Copper Co., 51 Idaho 753,
10 P (2) 613
17 C.J.S. p. 702
Nuquist v. Bauscher, 71 Idaho 89,
227 P (2) 83
12 Am. Jur. 749

The intention of the parties is to be deduced from the language employed by them, and the terms of the contract, where unambiguous, are conclusive, and the rule making the terms of the contract conclusive where unambiguous is controlling, in the absence of averment and proof of mistake, the question being not what intention may have existed in the minds of the parties but what intention is expressed by the language used.

Farm Credit Corp. v. Meierotto, 50 Idaho 538,
298 P. 378

Ehlinger v. Washburn Wilson Seed Co., 51 Idaho 17, 1 P (2) 188
1 P (2) 188
17 C.J.S. p. 695

The contract in question falls entirely within the foregoing provisions and can be interpreted to give effect to all of its provisions without violating any of them.

The contract provides that Bradley shall pay "a royalty of five per cent (5%) on all net smelter returns, net revenue, and net mint returns, as defined herein, upon and for all minerals, ores, metals or values, of any and every kind and character, mined, extracted or taken from the said mining claims" (R 15), and further provides for royalty to be paid "on or before the 20th day of the calendar month next succeeding the *receipt* by Bradley of said net returns as defined herein, the same to be so paid each and every month when any net smelter, mint, or other re-

turns are *received* by Bradley, copies of all sales returns to be furnished United by Bradley" (emphasis supplied). It will be admitted that net mint returns are not here involved so that our discussion may be confined to net smelter returns and net revenue.

It is also apparent that the contract presumes a sale of minerals, ores, metals or values because it is expressly provided that the royalties are to be paid upon receipt of the money paid Bradley from the sales. It is also conceded that Bradley owns all of the said minerals, ores, metals or values until the same are sold or disposed of. It is impossible for Bradley as owner to sell to itself as purchaser any of the said values taken from the claims. Bradley has not paid royalties to United until it has received money from the sale of minerals, ores, metals or values. The lower court recognized in its memorandum decision of October 10, 1952, that Bradley does not sell any concentrates to itself and stated: "In the instances we are concerned with here Bradley does not sell any concentrates to the smelters nor does it sell any concentrates to itself". In the definition of net smelter returns as used herein is "meant the amount *received* (emphasis supplied) from the smelter from any and all concentrates, metals or values shipped to smelter ***".

The express terms of this definition precludes Bradley from paying royalties on the concentrates at the Yellow Pine smelter on the basis which it contends is correct because there is no sale and no money received by Bradley from those concentrates or the saleable products they contain until the saleable prod-

ucts are sold. It would then appear that net smelter returns as defined in the contract is not applicable to the present situation as pointed out by the lower court in its memorandum decision of October 10, 1952.

The one question left would be whether or not net revenue as defined in the contract is applicable to the operation at the Yellow Pine smelter. An analysis of the definition of net revenue indicates that by net revenue is meant "the amount paid by *any purchaser* from the *sale* of concentrates, ores, *metals* or *values* shipped, taken or produced from said properties, ***" (emphasis supplied).

It will be conceded, we believe, that the end product from the smelting operation at the Yellow Pine smelter produces metals and values and that these metals and values are sold by Bradley to purchasers. It is apparent that the situation is covered in detail by the definition of net revenues as contained in the contract.

By reason of the foregoing, the lower court erred by dismissing the action without interpreting the contract in question and without interpreting the same as contended by United; by dismissing the action without a trial when genuine issues of fact were pending; by entering a judgment of dismissal without findings of fact, the judgment being one on the merits.

II

Specification No. III is that the court erred by ruling, deciding and holding that the plaintiff is not

entitled to have an accounting from the defendant based upon the net revenue provision of the contract which merely disposes of the accounting feature and not the main issue of the interpretation of the contract.

By the prayer of its complaint United asked the court to "require an accounting by the defendant to the plaintiff and, upon such accounting being had, that plaintiff have judgment against the defendant for any amount found due, owing and unpaid ****" (R 12). In its judgment the lower court decided that the plaintiff was not entitled to have an accounting from the defendant based upon the net revenue provision of said contract but only, if at all, upon the net smelter returns provision of said contract. It is impossible to determine what the court meant by the expression "if at all." The fact remains that the court denied United the right to an accounting on either theory. Regardless of which theory prevailed United was entitled to an accounting and it was error to preclude United from having such an accounting in court under the state of the record.

It was error to deny United an accounting in this case.

III

Specification No. VI is that the district court erred in concluding that the defendant is entitled to judgment as a matter of law.

It was error to so hold for the following reasons: There was no issue of law pending before the court on the date of its judgment. None of the pending genuine

issues had been determined and as long as the controversy remained unresolved neither the facts contended by United nor the facts contended by Bradley could be accepted as the final facts from which the court could conclude that the case should be dismissed as a matter of law. The law cannot act upon a state of facts until the same are resolved and established.

IV

Specification No. X is, "The district court erred in holding and in entering its memorandum decision of October 10, 1952" (R 136). The only matters before the court at that time were the motion of United to strike the affirmative defense (R 50); the motion of Bradley for judgment on the pleadings (R 51); and the motion of United to strike certain portions of the affidavits supporting the motion for summary judgment (R 71, 112). The court acted upon these motions and denied all of the same (R 140). The court's decision should have ended with the denial of these motions and should have gone no further as nothing else was then pending before the court. Further proceedings were necessary in order that the court could determine if the net revenue provision or the net smelter returns provision should form the basis of computing royalties and these further proceedings should have been as contended above with respect to trial, proof and findings.

Notwithstanding, the court by this memorandum decision has attempted to set aside the agreement in toto and substitute therefor a new agreement that

Bradley is entitled to pay royalties on a quantum meruit basis without the necessity of an accounting. The lower court expressly stated in this decision that: "It would seem that if the court must determine the matter it would have to be on the principle analogous to quantum meruit for the court obviously cannot make a contract for the parties." (R 139). By making this statement the court attempted to set aside the agreement between the parties and substitute therefor a new agreement while stating that it had no authority to so do.

It was error for the court to do more in its decision of October 10, 1952, than to act upon the motions then pending before it.

V

Specification of Error No. XI is that the district court erred in holding and entering the memorandum decision of April 9, 1954 (R 164).

When this memorandum decision was issued there was nothing before the court except objections to certain interrogatories directed to Bradley Company and a motion on its part for a protective order limiting the scope of an inspection of records desired by the plaintiff (R 164). In passing upon the objections and the motion the court said: "I think, therefore, that the information sought by United may have been material, and the objections to the interrogatories and the request for inspection are accordingly disallowed." (R 166). This decision completely disposed of the matters then before the court and the court

erred respecting the other matters contained in said decision.

VI

Specification No. XII is that the evidence is wholly insufficient to support the conclusions or the judgment entered herein. As to this specification, the court by its judgment of dismissal assumed that the facts, established by proof, did not warrant the plaintiff in having an interpretation of the contract; did not entitle the plaintiff to a decree that the proper and legal method of determining the amount of royalty was by the use of net revenue as defined in the contract; that the plaintiff was entitled to an accounting on any theory. As a matter of fact there was no evidence of any kind and consequently the conclusions and judgment of the court are not sustained by any evidence whatever.

CONCLUSION

The trial court erred in dismissing the action while genuine issues of fact remained unresolved.

The trial court erred in denying United an accounting under the net revenue provisions of the contract and further erred in denying United an accounting under any provision of the contract.

The trial court erred in failing to interpret the contract and has attempted to impose a new and different agreement upon the parties, notwithstanding that the net revenue provision of the contract completely covers the controversy between the parties

without doing violence to any other provision of the contract.

Respectfully submitted,

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